

C.P.
783

United States
Circuit Court of Appeals
For the Ninth Circuit

THOMAS A. O'DONNELL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Upon Petition to Review an Order of the United States
Board of Tax Appeals

FILED

DEC -9 1932

PAUL P. O'BRIEN,
CLERK

No. 7002

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Circuit Court of Appeals
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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Amended Answer	10
Answer	9
Certificate and Seal.....	134
Decision	36
Docket Entries	1
Findings of Fact and Opinion.....	20
General Denial to the Affirmative Allegations Set Forth in Respondent's Second Amended Answer	18
Petition	3
Petition for Review.....	37
Praecipe	133
Second Amended Answer.....	12
Statement of Evidence.....	49

1931

- Jul. 30—Order extending time to September 24, 1931, to file petitioner's brief, entered.
- Aug. 20—Stipulation for extension to Oct. 15, 1931, to file briefs, filed. 8/21/31 granted.
- Oct. 17—Stipulation for extension to Nov. 16, 1931, to file briefs, filed. 10/20/31 granted.
- Nov. 16—Brief filed by General Counsel.
- Dec. 8—Motion for extension of time to Jan. 1, 1932, to file brief, filed by taxpayer. 12/9/31 granted.
- Dec. 28—Brief filed by taxpayer.

1932

- Mar. 23—Findings of fact and opinion rendered, Ernest H. Van Fossan, Div. 9. Decision will be entered under Rule 50.
- May 16—Notice of settlement filed by General Counsel.
- May 19—Hearing set June 15, 1932, on settlement.
- Jun. 15—Hearing had before Mr. Arundell on settlement under Rule 50. Not contested. Referred to Mr. Van Fossan for decision.
- Jun. 17—Decision entered, Ernest H. Van Fossan, Div. 9.
- Jun. 22—Consent to settlement filed by taxpayer.
- Jul. 28—Petition for review to U. S. Circuit Court of Appeals (9) with assignments of error, filed by taxpayer.
- Jul. 28—Proof of service filed.

1932

Sep. 19—Motion to enlarge time to Oct. 25, 1932, for preparation of evidence and delivery of record filed by taxpayer.

Sep. 20—Order enlarging time to Oct. 25, 1932, for preparation of evidence and delivery of record entered. [1]*

1932

Oct. 5—Praecipe with proof of service thereon filed.

Oct. 5—Agreed statement of evidence approved and ordered filed.

Oct. 25—Order enlarging time to November 15, 1932, for filing certified copies of record papers, entered. [2]

United States Board of Tax Appeals.

Docket No. 35,341

THOMAS A. O'DONNELL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION.

The above named petitioner hereby appeals from the determination of the respondent set forth in his deficiency letter dated January 7, 1928, IT:FAR:

*Page numbering appearing at the foot of page of original certified Transcript of Record.

B-6 EEN-60D, and as the basis of this proceeding alleges as follows:

I.

That petitioner is a citizen of the United States and resides at Los Angeles, California.

II.

That the deficiency letter, copy of which is attached hereto, marked "Exhibit A" was mailed to petitioner on January 7, 1928.

III.

That the taxes in controversy are income taxes for the calendar year 1923 in the sum of \$2201.69.

IV.

The determination of the taxes set forth in said deficiency letter is based upon the following error:

The respondent erroneously and illegally increased petitioner's net income for the year 1923 by the sum of \$16,023.51, no part of which was received by petitioner. [3]

The facts upon which petitioner relies as the basis of this proceeding are as follows:

The respondent erroneously and illegally added to petitioner's net income, as disclosed by his return for the year 1923, the sum of \$16,023.51; no part of this amount was received by petitioner during the year 1923; no part thereof constitutes income subject to the taxes imposed by the Revenue Act of 1921.

Wherefore it is prayed that the Board hear and determine this appeal and render judgment in accordance with the foregoing.

THOMAS R. DEMPSEY,
HOWARD W. REYNOLDS,
A. CALDER MACKAY,

Attorneys for Taxpayer, 508 Security Building,
Los Angeles, California.

State of California,
County of Los Angeles.—ss.

Thomas A. O'Donnell, being first duly sworn, deposes and says: That he is the petitioner above named and has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except the matters which are therein stated to be upon information and belief and that as to those matter he believes it to be true.

THOS. A. O'DONNELL.

Subscribed and sworn to before me this 14th day of February, 1928.

[Seal]

ADA E. STOMBS,
Notary Public in and for said County and
State. [4]

EXHIBIT A.

Treasury Department
Washington

Jan 7 1928

Office of
Commissioner of Internal Revenue

IT:FAR:B-6 EEN-60D

Mr. Thomas A. O'Donnell,
1004 Security Building,
Los Angeles, California.

Sir:

The determination of your tax liability for the year 1923 discloses a deficiency of \$2,201.69, as shown by the attached statement.

In accordance with the provisions of Section 274 of the Revenue Act of 1926, you are allowed 60 days from the date of mailing of this letter within which to file a petition for the redetermination of this deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the Board within the 60-day period, not counting Sunday as the sixtieth day.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the final decision on such petition has been made, the unpaid amount of the

assessment must be paid upon notice and demand from the Collector of Internal Revenue. No claim for statement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute a waiver of your right to file a petition with the United States Board of Tax Appeals on the inclosed Form A, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:FAR:B-6-EEN-60D. In the event that you acquiesce in a part of the determination, the waiver should be executed with respect to the items to which you agree.

Respectfully,

D. H. BLAIR,

Commissioner.

By C. B. ALLEN,

Deputy Commissioner.

Inclosures:

Statement

Form A

Form 882. [5]

Statement

IT:FAR :B-6 EEN-60D

In re: Mr. Thomas A. O'Donnell,
1004 Security Building,
Los Angeles, California.

Year	Deficiency in Tax
1923	\$2,201.69
Net income disclosed by return	\$33,577.30
Addition to income:	
1. Dividends received from Trust #5272 Hollyridge Tract, Security Trust and Savings Bank, Los Angeles, California	16,023.51
Net income revised	<u>\$49,600.81</u>

Information on file in this office indicates that Trust #5272, Hollyridge Tract, Security Trust and Savings Bank, Los Angeles, California, has been determined to be an association taxable as a corporation. Information has been submitted by the Internal Revenue Agent in Charge at San Francisco, California, indicating that you received dividends from this association amounting to \$16,023.51, for 1923.

An examination of your return indicates that no dividends were reported from this source. Dividends amounting to \$16,023.51, have, therefore, been included in your return.

Payment of the deficiency in tax should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

[Endorsed]: Filed Feb. 20, 1928. [6]

[Title of Court and Cause.]

ANSWER.

Comes now the Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, and for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4. Denies that the respondent erred in the determination of the deficiency tax.

5. Denies that the respondent in adding to the petitioner's net income for the year 1923 the amount of \$16,023.51, acted erroneously and illegally. Denies that the correct taxable net income of the petitioner for the year 1923 was less than that determined by the respondent.

Denies generally and specifically each and every allegation not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the taxpayer's petition be dismissed and the appeal denied.

C. M. CHAREST,

General Counsel,

Bureau of Internal Revenue.

CLARK T. BROWN,

Special Attorney,

Bureau of Internal Revenue,

Of Counsel.

CTB:OJT/apt

[Endorsed]: Filed Apr. 10, 1928. [7]

[Title of Court and Cause.]

AMENDED ANSWER.

Now comes the Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, and by way of amended answer to the petition filed in the above-entitled cause, admits, denies and avers as follows:

1, 2 and 3. Admits the allegations contained in paragraphs I and II, and admits that the taxes in controversy are income taxes for the calendar year 1923 but denies that the same are in the sum of \$2,201.69.

4. Denies that the respondent erred in the manner alleged in paragraph IV of the petition herein in the determination of the deficiency tax.

5. Denies that the respondent, in adding to the petitioner's net income for the year 1923 the amount

of \$16,023.51, acted erroneously and illegally. Denies that the correct taxable net income of the petitioner for the year 1923 was less than that determined by the respondent.

Avers that the correct taxable income of the petitioner for the year 1923 was the sum of \$164,436.84.

Further answering said petition and by way of asserting claim for an increased deficiency in tax, avers that respondent erred in asserting a deficiency in the sum of only \$2,201.69 for the reason that the amount [8] of petitioner's net income for the year 1923 was \$164,436.84 and avers that the deficiency in tax should have been asserted in the sum of \$46,609.67.

Denies generally and specifically each and every allegation not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the appeal be denied, and that the deficiency asserted by the Commissioner be increased to the sum of \$46,609.67.

(Signed) C. M. CHAREST,
C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

STANLEY SUYDAM,
Special Attorney,
Bureau of Internal Revenue.
Of Counsel.

SB:OJT/mom

[Endorsed]: Filed Sept. 11, 1928. [9]

[Title of Court and Cause.]

SECOND AMENDED ANSWER.

Now comes the Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, and, leave of the Board having first been obtained, files his second amended answer to the petition on file herein, and admits, denies and alleges as follows:

I.

Admits the allegations of paragraph 1 thereof.

II.

Admits the allegations of paragraph 2 thereof.

III.

Admits the allegations of paragraph 3, except that it is alleged that the taxes in controversy for the calendar year 1923, are in the sum of \$45,619.16.

IV.

Denies that the respondent erred in the manner alleged in paragraph 4 of the petition herein, in the determination of the deficiency in tax. [10]

V.

Denies that the respondent, in adding to petitioner's net income for the year 1923 the amount of \$16,023.51, acted erroneously and illegally. Denies that the correct taxable net income of the petitioner for the year 1923 was less than that determined by the respondent.

FOR FURTHER ANSWER AND BY WAY OF AFFIRMATIVE RELIEF, the respondent alleges that the correct taxable net income of the petitioner for said calendar year 1923 was the sum of \$164,509.12, as more particularly appears as follows:

I-a.

Alleges that on January 9, 1918, the petitioner entered into and executed a certain contract of agreement with the Petroleum Midway Company, Ltd., whereby he transferred to said Company, one-third of the outstanding capital stock of the San Gabriel Petroleum Company in consideration of which he was to receive, and did receive, one-third of the net profits received by said Company, its successors and assigns from the development and operation of the properties described and enumerated in the leases, contracts and agreements owned by said San Gabriel Petroleum Company.

II-a.

That subsequently and in the month of July, 1919, the petitioner created a revocable trust, as is hereinafter more particularly set out, and in connection therewith assigned to the Securities Trust & Savings Bank, a corporation of Los Angeles, California, all his rights, titles, interests, claims, estates and property in and to the written agreement dated January 9, 1918, referred to above in paragraph I-a, and executed between said petitioner and the [11] Petroleum Midway Company,

Ltd., wherein said petitioner was to receive as a consideration for the sale and transfer of certain stock therein mentioned a full one-third of all the net profits received by said Petroleum Midway Company, Ltd., as is more particularly set forth above.

III-a.

That in July, 1919, the petitioner herein created a trust (which was revocable by the petitioner), known as Trust No. 5106, naming the said Security Trust & Savings Bank, heretofore referred to in paragraph II-a of this answer, as trustee, and assigned to said Bank all of his rights, titles, interest, claims, estates and property in and to the said written agreement of January 9, 1918, with said Petroleum Midway Company, Ltd.

IV-a.

That said trust was subsequently and on to-wit, about April 18, 1923, revoked by the petitioner and a new trust created, known as trust No. 5549, the terms and conditions of which, including the power of revocation in the petitioner, were similar in all material matters to said trust No. 5106, heretofore referred to.

V-a.

That during the taxable year 1923, said trust No. 5106, under said agreement and assignments above-referred to, received certain profits and proceeds from the Petroleum Midway Company, Ltd., in the

sum of \$32,080.85; that the trustee's fees and other expenses amounted to the sum of \$320.81, leaving an aggregate net taxable income of \$31,760.15, all of which is properly taxable to the petitioner herein. That during the same period proceeds and profits were received from the said Petroleum Midway Company, Ltd. [12] by said trust No. 5549, in the sum of \$83,984.08; that the trustee's fees and other expenses amounted to the sum of \$859.38, leaving a net taxable income of \$83,148.16, all of which is properly taxable to the petitioner herein; that the net taxable income derived by said petitioner, through said trust for said taxable year 1923, is the sum of \$114,908.31, and that none of said sum of \$114,908.31 was reported by the petitioner in his income tax return for the taxable period 1923.

VI-a.

Respondent alleges that the fair market value, if any, of the rights acquired by the petitioner by virtue of the contract entered into between the Petroleum Midway Company, Ltd. and the petitioner herein, on January 9, 1918 and referred to above in paragraph I-a, did not exceed the sum of \$75,000.00 on the last named date; that the net proceeds and profits paid over to the petitioner or his assignees under the terms and provisions of said contract of January 9, 1918, with the Petroleum Midway Company, Ltd., between said last-named date and December 31, 1922, is the sum of \$413,672.14.

A computation of petitioner's tax liability disclosing the adjustments set forth above and setting forth the correct deficiency in tax for the taxable year 1923 is hereinafter attached as Exhibit "A" and is by reference hereto made a part hereof.

WHEREFORE, the respondent prays that the net taxable income, of the petitioner herein, of \$49,600.81 as disclosed in the deficiency letter [13] upon which this Appeal is predicated, be increased by said amount of \$114,908.31 and that the Board find the correct taxable net income of said petitioner for said taxable year to be \$164,509.12. The respondent further prays that the deficiency in tax be increased to the sum of \$45,619.16.

C. M. CHAREST,
General Counsel,

Bureau of Internal Revenue.

By ALVA C. BAIRD,
Special Attorney,

Bureau of Internal Revenue. [14]

EXHIBIT "A".

COMPUTATION OF NET INCOME AND TAX
FOR 1923.

Net income per return		\$33,577.30
Add: Dividends received from Trust #5272, Hollyridge Tract, Security Trust & Savings Bank, Los An- geles, California		16,023.51
		<hr/>
Net income as shown in 60-D Letter		\$49,600.81
Add: Income from Trust #5106, Security Trust & Savings Bank, Los Angeles, California,	\$31,760.15	
Income from Trust #5549, Security Trust & Savings Bank, Los Angeles, California,	\$83,148.16	
Total income from Trusts		114,908.31
		<hr/>
Correct taxable net income		\$164,509.12
Less: Dividends	\$16,023.51	
Personal exemption	1,000.00	17,023.51
		<hr/>
Balance subject to normal tax		\$147,485.61

Normal tax at 4% on		
\$ 4,000.00		\$ 160.00
Normal tax at 8% on		
143,485.61		11,478.85
Surtax on \$164,509.12		53,569.47
		<hr/>
Total		\$ 65,208.32
Less: 25% of tax under section 1200 of the 1924 Act.		16,302.08
		<hr/>
Total tax assessable		\$ 48,906.24
Tax previously assessed		3,287.08
		<hr/>
Deficiency in tax		\$ 45,619.16

[Endorsed]: Filed at hearing May 27, 1931. [15]

[Title of Court and Cause.]

GENERAL DENIAL TO THE AFFIRMATIVE ALLEGATIONS SET FORTH IN RESPONDENT'S SECOND AMENDED ANSWER.

(Read into record May 27, 1931)

* * * **MR. MACKEY.**—There is no objection, if your Honor please, except we would at this time like to enter a denial to each and every affirmative allegation in the answer. We received it only a few moments ago and have not had an opportunity to examine it carefully.

The MEMBER.—That is in compliance with the rule, if it be necessary that you file a reply.

Mr. MACKKEY.—Yes.

The MEMBER.—The amended answer may be filed and the Reporter will enter a general denial of the affirmative allegations on behalf of the petitioner. [16]

[Title of Court and Cause.]

A true copy: Teste B. D. Gamble, Clerk U. S. Board of Tax Appeals.

Where it appears that a taxpayer who, in a previous year, sold certain stock and options for a proportionate interest in future income of certain property, has, previous to the taxable year, received under such agreement a sum in excess of the basic fair market value of such stock and the cost of the options, all sums received in the taxable year constituted income.

THOMAS R. DEMPSEY, ESQ., and A. CALDER MACKAY, ESQ., for the petitioner.

ALVA C. BAIRD, ESQ., for the respondent.

This proceeding was brought to redetermine a deficiency in the income taxes of the petitioner for the year 1923 in the sum of \$2,201.69.

The petitioner alleged that the respondent erroneously increased his income by \$16,023.51. The respondent conceded his error in this respect but by his second amended answer affirmatively raised the

issue that the petitioner was taxable on the income from Trusts numbered 5106 and 5549 received during the year 1923 in the sum of \$164,509.12 and requested that the deficiency in his income tax be increased to \$45,616.67. The petitioner entered a general denial of all affirmative allegations of the answer. [17]

FINDINGS OF FACT.

The facts were stipulated and are substantially as follows:

During March, 1917, Thomas A. O'Donnell, M. L. McCray and L. A. McCray acquired for a nominal consideration certain oil and gas leases, more particularly described as:

(a) A certain lease dated March 27, 1917, wherein G. Piuma, et al., are designated as lessors and M. L. McCray as lessee, which lease runs for 15 years.

(b) A certain lease dated March 15, 1917, wherein Barton Darlington is designated as lessor and M. L. McCray as lessee, which lease runs for the period of 20 years.

(c) A certain lease dated March 15, 1917, wherein B. F. Taylor is designated as lessor and M. L. McCray as lessee, which lease runs for a period of 20 years.

(d) A certain lease dated March 15, 1917, wherein Andres Irwin is lessor and M. L. McCray is lessee, which lease runs for a period of 20 years.

(e) A certain lease dated March 12, 1917, wherein William S. Prugh is designated as lessor and M. L. McCray as lessee, which lease runs for a period of 20 years.

On June 28, 1917, the said leases were transferred and assigned to the San Gabriel Petroleum Company in exchange for its outstanding capital stock, Thomas A. O'Donnell, M. L. McCray and L. A. McCray each receiving one-third of such stock. [18]

On December 24, 1917, and December 31, 1917, respectively, Thomas A. O'Donnell acquired certain options to purchase all of the said capital stock in the San Gabriel Petroleum Company owned by M. L. McCray and L. A. McCray.

The option dated December 24, 1917, and executed by M. L. McCray provided for the purchase of 235 shares of the capital stock of the San Gabriel Petroleum Company for \$75,000, payable \$25,000 on January 6, 1918, and the remainder in 10 equal annual installments. The option also contained the following condition:

This price is to be net to me (McCray) over and above all stockholders and other liabilities for which I may be responsible at the date of sale, including note at Farmers & Merchants National Bank. At the time of sale I will want this note cancelled and returned to me, together with a letter from the bank releasing me from stockholders liability. I will also want your

guarantee to hold me free of all stockholders and other liability.

The option dated December 31, 1917, and executed by L. A. McCray covered the purchase of all of his stock in the San Gabriel Petroleum Company for \$75,000, payable \$25,000 upon the exercise of the option and the remainder in five annual installments of \$10,000 each on January 6, 1919 to 1923, inclusive. The option also contained the following provisions:

The foregoing option is given with the understanding that said San Gabriel Petroleum Company is indebted to the bank to the extent of \$45,000.00.

It is also understood that if this option is exercised you (O'Donnell) will assume all responsibility in connection with said indebtedness and relieve me (McCray) as guarantor of any existing notes at the time transfer is made.

[19]

Thereafter Thomas A. O'Donnell assigned all of his right, title and interest in and to the options heretofore mentioned and also all his right, title and interest in and to the stock then owned by him in the San Gabriel Petroleum Company, being one-third of the outstanding stock thereof, to the Petroleum Midway Company, Ltd., in consideration of the contract of January 9, 1918, wherein Thomas A. O'Donnell is designated first party, and Petroleum Midway Company, Ltd., second party. By the

terms of that contract the Petroleum Midway Company, Ltd. purchased all of the petitioner's stock in the San Gabriel Petroleum Company for one-third of the net profits to be received by it from the development and operation of the properties described in the leases and contracts owned by the San Gabriel Petroleum Company. The Petroleum Midway Company, Ltd. also agreed to pay all debts of the San Gabriel Petroleum Company, to acquire all the assets owned by that company and to dissolve and "disincorporate" it.

The Petroleum Midway Company, Ltd. determined to exercise the O'Donnell option and on the 7th day of January, 1918, a certain agreement was entered into between M. L. McCray and L. A. McCray, parties of the first part, and Petroleum Midway Company, Ltd., party of the second part, whereby the second party agreed to purchase and the first party agreed to sell the stock held by them in the San Gabriel Petroleum Company. The Petroleum Midway Company, Ltd. paid to L. A. McCray and M. L. McCray on the dates indicated, the following amounts: [20]

To L. A. McCray:	
January 4, 1918	\$25,000.00
January 4, 1919	10,000.00
January 5, 1920	40,000.00
	<hr/>
Total amount paid	\$75,000.00
To. M. L. McCray:	
January 4, 1918	\$25,000.00
January 4, 1919	25,000.00
January 5, 1920	25,000.00
	<hr/>
Total amount paid	\$75,000.00

After January 9, 1918, and prior to May 1, 1918, the Petroleum Midway Company, Ltd., acquired all of the assets of the San Gabriel Petroleum Company, which consisted of the leases heretofore referred to, and assumed the latter's liabilities and thereupon the latter company was dissolved.

During the period from January 9, 1918, to July 25, 1919, the Petroleum Midway Company, Ltd. paid the petitioner the total sum of \$64,775.48, under and pursuant to the terms of that certain contract dated January 9, 1918, heretofore referred to, which proceeds were derived by the Petroleum Midway Company, Ltd. from the operations of the leases heretofore referred to.

On or about the 25th day of July, 1919, the petitioner created by a written instrument, a Declaration of Trust, called No. 5106, wherein he appointed the Security Trust & Savings Bank as trustee, and

conveyed to it all his right, title and interest in and all claims under the contract of January 9, 1918, with the Petroleum Midway Company, Ltd. He also transferred to the trust \$5,000 in [21] cash. The petitioner's wife and relatives were made the beneficiaries under conditions not material to this case. The trust contains the following provisions:

It is an express term and condition of this trust that said Trustor has reserved, and said Trustee does hereby assent to, the express right, power, option and privilege in said Trustor, by notice in writing addressed and delivered to said Trustee at any time or times during the term of this trust, without any payment or other consideration therefor, to withdraw, and have duly paid, transferred, assigned, conveyed and delivered to him the whole or any part of the trust estate, or to substitute for the whole or any part of the above described trust estate any other property, real and/or personal which said Trustor may tender for the purpose, and upon the receipt of such written directions or request from said Trustor, said Trustee shall forthwith and without consideration or any investigation or appraisal of the value of the same, convey, transfer or deliver to the Trustor any portion or the whole of the Trust Estate which may be designated in such written request, or shall accept in exchange and substitution for the whole or any portion of the trust estate, such property real and/or

personal, as the Trustor shall tender to the Trustee for such exchange or substitution.

In acting in conformity and compliance with said Trustor's written request, said Trustee shall be and hereby is fully and absolutely released and discharged from all liability to any person whomsoever on account of the property affected by such written request, or by reason of anything it may do in accordance therewith; anything to the contrary herein contained notwithstanding.

* * * * *

It is a further provision of this trust that said Trustor has reserved, and he is hereby given, the express rights and power to revoke in whole or in part this trust at any time after two years from the date hereof by a notice of revocation in writing addressed and delivered to said Trustee at least five (5) days prior to the taking effect of such revocation. Between the time of receipt of such notice of revocation and its taking effect, said Trustee shall have every power, [22] right and privilege herein given to it in reference to the trust estate, except that no sales, incumbrance or other disposition of the principal or income of any trust estate shall be made by said Trustee during such period; provided, however, that on such revocation taking effect said Trustee shall convey, transfer, assign and deliver to said Trustor, or his nominees, such rights, titles, interests

and estate as said Trustee shall then have or possess in and to all of the property then subject to this trust, and said Trustor or his nominees shall take and accept the trust estate affected thereby subject to, and shall assume all of the existing contracts, agreements and incumbrances or other obligations incurred in reference thereto by said Trustee under the terms of this trust; and provided further that in no event shall any such notice of or attempted revocation be of any effect or validity unless and until all sums then be due the Trustee under the terms hereof, or which it may be obligated to then or thereafter pay, shall first be fully paid, and said Trustee shall be fully released and discharged from all liabilities and obligations of every kind and nature affecting such property or the Trustee in relation thereto, or the claims of any other beneficiaries under this trust, anything to the contrary herein contained notwithstanding.

* * * * *

This trust shall continue in full force and effect for a period of ten (10) years from and after the date hereof, unless the whole trust be sooner revoked, or unless the subject matter or corpus of the trust be sooner extinguished, lost, or exhausted, and the whole of the trust estate at the termination hereof shall be transferred absolutely to said O'Donnell Oil & Securities Company. Upon the expiration of said

ten (10) years from the date hereof and the payment in full to the Trustee of all sums then due it under the terms hereof, said Trustee shall interest (sic), assign and deliver the whole of the property then subject to this trust to said O'Donnell Oil & Securities Company.

By an independent instrument dated February 25, 1919, the petitioner assigned to the trustee all his rights under the contract with the Petroleum Midway Company, Ltd., dated January 9, 1918. [23]

From the 25th day of July, 1919, to and including December 31, 1922, the Petroleum Midway Company, Ltd., paid to the said Security Trust & Savings Bank, as trustee under Declaration of Trust No. 5106, the total sum of \$348,896.66, by virtue of the contract of January 9, 1918, and the assignment thereof. During the year 1923 the Security Trust & Savings Bank, as trustee in that certain Trust No. 5106, received the sum of \$32,080.85 from the Petroleum Midway Company, Ltd. by virtue of the contract of January 9, 1918, and the assignment thereof referred to above. The bank paid to itself as trustee during said year as commission and fees the sum of \$320.81 and distributed during the said year to the following persons the amounts set opposite their respective names:

Lillie O'Donnell	\$ 3,000.00
Ruth O'Donnell Tompkins	750.00
Doris O'Donnell	750.00
Mamie Litster	900.00
O'Donnell Oil & Securities Co.	26,360.15
	<hr/>
Total	\$31,760.15

On April 9, 1923, the said trust No. 5106 was re-
voked.

On April 16, 1923, the petitioner by a written in-
strument dated April 16, 1923, created Declaration
of Trust, called No. 5549, wherein the Security
Trust & Savings Bank was appointed trustee. All
terms and conditions of trust No. 5549 dated April
16, 1923, were practically identical with those con-
tained in Declaration of Trust No. 5106, the bene-
ficiaries and their respective shares therein being
different. During the year 1923 the Security Trust
& Savings Bank, as trustee in that certain trust
No. 5549, received the sum of [24] \$83,988.04 from
the Petroleum Midway Company, Ltd. by virtue of
the contract of January 9, 1918, and the assignment
thereof to the trustee as referred to in this para-
graph. The bank paid to itself as trustee during
the said year as commissions and fees the sum of
\$839.88 and distributed during said year to the fol-
lowing persons the amounts set opposite their re-
spective names:

Lillie O'Donnell	\$ 9,000.00
Ruth O'Donnell Tompkins	2,250.00
Doris O'Donnell	2,250.00
Mrs. Myra O'Donnell	900.00
Mrs. Winnie Tucker	900.00
Tompkins Investment Co.	67,848.16
	<hr/>
Total	\$83,148.16

The petitioner kept his accounts and reported his income for the taxable year 1923 on the cash receipts and disbursements basis.

The following phrase preceded the signed stipulation:

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, through their attorneys, subject to such objections as to relevancy, materiality or competency as either party may have hereto.

In the respondent's second amended answer appears the following:

Respondent alleges that the fair market value, if any, of the rights acquired by the petitioner by virtue of the contract entered into between the Petroleum Midway Company, Ltd. and the petitioner herein, on January 9, 1918 * * * did not exceed the sum of \$75,000.00 on the last-named date; that the net proceeds and profits paid over to the petitioner or his assignees under the terms and provisions of said contract of January 9, 1918, with the Petroleum

Midway Company, Ltd., between said last-named date and December 31, 1922, is the sum of \$413,672.14.

We make the following additional finding of fact:
[25]

The fair market value of the stock in San Gabriel Petroleum Company acquired by petitioner June 28, 1917, in exchange for his interest in the several leases, together with the cost on the dates acquired of the options on the remaining two-thirds of the stock of said company was not in excess of \$413,672.14.

OPINION.

VAN FOSSAN: Respondent admitted error in his original determination of a deficiency but by second amended answer raised an issue as to the taxability to petitioner of payments made to the trustee of the two trusts created by him. Both trusts were expressly subject to revocation by the settlor and petitioner apparently does not seriously contend that the income, if any was earned in 1923, was not income to him but maintains that the respondent has failed to prove the payments constituted income.

Respondent's allegation is that the fair market value of the rights acquired by the petitioner by virtue of the contract of January 9, 1918, with Midway, i. e., the right to receive one-third of the future profits of Midway from the property in question, did not exceed \$75,000 on the date of ac-

quisition and that he or his nominees had received the sum of \$413,672.14 under such contract prior to 1923.

The transaction of January 9, 1918, by the terms of which the petitioner transferred to Midway his one-third stock interest in San Gabriel and options on the remaining two-thirds of such stock in consideration of receiving one-third of the future profits of [26] Midway was not a closed transaction on which gain arose on the contract date. It was a sale of property which might or might not give rise to income dependent on the incrutable factor of future oil production. If and when petitioner had received back his capital cost or basis income would begin to accrue. If such cost was never recovered no income would ever arise. *Doyle vs. Mitchell Bros. Co.*, 247 U. S. 179. Petitioner reported his income on a cash basis and is required to return income for taxation only when the profit is realized. The promise to pay one-third of future profits was not equivalent to cash nor did it have, on January 9, 1918, an ascertainable fair market value. *Burnet vs. Logan*, 283 U. S. 404.

Nor do we deem it proper to find a fair market value as of January 9, 1918, by employing as a basis the subsequent profits. Such profits might serve as corroborative of the reasonableness of a figure of value if such were ascertainable as of the basic date. But no value of the right being ascertainable on that date the subsequent returns will not be looked to to determine the same.

This is not, however, an end of the matter. Though respondent may have been mistaken in assuming that a fair market value could be determined as of January 9, 1918, we have the further problem of determining whether petitioner had recovered the cost or value of the stock and options prior to the close of the taxable year. It is stipulated that petitioner or the trustee of the revocable trusts created by him received from the Midway Company, between January 9, 1918 and December 31, 1922, the sum of \$413,672.14 on [27] account of the contract of January 9, 1918, and that in 1923 the further sum of \$114,908.31 was so received. As we have indicated, if he had recovered the cost or basis of the property sold the payments received in 1923 constitute income. To solve this further problem it is necessary to look back of the transaction of January 9, 1918, to the date of acquisition of the stock and options and, if possible, determine their cost or value, whichever is the appropriate base.

Under date of June 28, 1917, petitioner acquired one-third of the stock of San Gabriel Company by transferring to that company his undivided one-third interest in certain oil leases. At the same time the two McCrays received one-third each of the stock for their interests in the leases. These leases had been acquired for a nominal consideration.

Under the Revenue Act then in force the transaction of June 28, 1917 was a taxable transaction

and thereafter the basis for determining gain on disposition of the stock was the fair market value of the same when received. Since all of the stock was exchanged for the leases and there being no evidence of any other assets, we believe it reasonably inferable that the stock had no greater value than the leases. These leases had been acquired during March of the same year. The facts do not indicate that any development had been undertaken or production achieved prior to June 28, 1917, when the leases were transferred to San Gabriel Company. [28]

Six months later, on January 7, 1918, the two McCrays sold their stock for a net price of \$75,000 to each, the Midway Company assuming all obligations of San Gabriel Company and undertaking to save the sellers harmless therefrom. In the option given petitioner on M. L. McCray's stock mention is made of a note due the Farmers & Merchants National Bank, while in the option from L. A. McCray specific mention of a note for \$45,000 due "the bank" is made. That these references are to the same note seems clear to us. There is no other evidence from which we are led to believe that the liabilities assumed by Midway were in a large amount and in any event it seems apparent that all of these liabilities, including the note for \$45,000, were incurred by the San Gabriel Company subsequent to June 28, 1917, the date when petitioner acquired his stock. If, however, they were in existence at the last mentioned date they would not

serve to increase the value of the stock then acquired by petitioner.

In addition to his one-third stock interest petitioner sold on January 9, 1918, the two options on the remaining two-thirds of such stock held by the McCrays. One of these options recites no consideration while the other states one dollar as consideration. The first of these options was acquired on December 24, 1917, and the other on December 31, 1917. They were sold and transferred a few days later—on January 9, 1918. Since the options were so acquired their cost is the basis for determining gain on disposition. Having been acquired at nominal cost they add nothing [29] to the aggregate amount to be used as a base on their subsequent sale with the stock. We are thus thrown back on the fair market value of the stock on June 28, 1917, as the ultimate base for determining profit.

The record in this case is incomplete in many respects. The facts were stipulated and we have no opinion evidence such as is usually presented in valuation cases. On such facts as we have before us and making such reasonable inferences of fact therefrom as seems justified, does it appear that by the end of 1922, when petitioner or his nominees had received \$413,672.14, he had recovered the fair market value of the stock and cost of the options sold January 9, 1918? Though it is impossible on the record to determine exactly the fair market value of petitioner's stock on June 28, 1917, we are satisfied that it, together with the cost of the op-

tions, was less than \$413,672.14, the amount paid on account thereof by Midway Company prior to January 1, 1923, and we do so find. It follows that previous to the taxable year petitioner had received the fair market value or cost of the property sold by him on January 9, 1918, and that all sums received in 1923 constituted taxable income.

Decision will be entered under Rule 50. [30]

United States Board of Tax Appeals.

Docket No. 35,341

THOMAS A. O'DONNELL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION.

Pursuant to findings of fact and opinion of the Board promulgated March 23, 1932, the respondent in the above entitled proceeding filed notice of settlement with the Board on May 16, 1932. A copy of said notice was duly served on the parties, together with notice of hearing and the case having been called for settlement on June 15, 1932, at which time no objection to the proposed settlement was offered, it is

ORDERED and DECIDED that, upon redetermination, there is a deficiency for the year 1923 in the amount of \$39,731.98.

(Signed) ERNEST H. VAN FOSSAN,
Member.

Entered: Jun. 17, 1932.

A true copy: Teste B. D. Gamble, Clerk U. S. Board of Tax Appeals. [31]

[Title of Court and Cause.]

PETITION FOR REVIEW OF DECISION OF
UNITED STATES BOARD OF TAX APPEALS.

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Thomas A. O'Donnell in support of this, his petition, filed in pursuance of the provisions of Section 1001 of the Act of Congress approved February 26, 1926, entitled "The Revenue Act of 1926," as amended by Section 603 of the Act of Congress approved May 29, 1928, entitled "The Revenue Act of 1928," and as further amended by Section 1101 of the Act of Congress approved June 6, 1932, entitled "The Revenue Act of 1932," for the review of the decision of the United States Board of Tax Appeals promulgated March 23, 1932, the final order of determination having been entered June 17, 1932, respectfully shows to this Honorable Court as follows:

I.

STATEMENT OF THE NATURE OF THE
CONTROVERSY.

BRIEF STATEMENT OF FACTS.

The question presented in this appeal is what portion, if any, of monies received during the year 1923 by the Security Trust and Savings Bank as trustee under trusts Nos. 5106 and 5549 constituted taxable income to petitioner.

The respondent, on January 7, 1928, determined a deficiency [32] in tax against petitioner in the sum of \$2,201.69 from which petitioner appealed. The additional tax arose because the respondent included in petitioner's net taxable income the sum of \$16,023.51. At the date of the trial respondent admitted that he had erroneously included said sum in petitioner's net taxable income, but at the same time respondent filed his second amended answer wherein he affirmatively alleged that petitioner had erroneously failed to include in his income tax return as taxable income the sum of \$114,908.31 received by the Security Trust and Savings Bank as trustee under the two aforementioned trusts. The respondent's affirmative answer was based entirely upon the theory that the fair market value of the rights acquired by petitioner by virtue of a contract entered into between the Petroleum Midway Company, Ltd. and petitioner on January 9, 1918, did not exceed the sum of \$75,000.00 and that all sums in excess of this amount constituted taxable income.

No oral testimony was offered by respondent to support his affirmative allegations and the only evidence offered was a stipulation of facts which are substantially as follows:

During March, 1917, Thomas A. O'Donnell, petitioner herein, M. L. McCray and L. A. McCray acquired for a nominal consideration certain oil and gas leases which on June 28, 1917, were transferred and assigned to the San Gabriel Petroleum Company in exchange for its outstanding capital stock. Each one of the foregoing persons received one-third of such stock.

On December 24, 1917, and December 31, 1917, respectively, petitioner acquired certain options to purchase all of the said capital stock of the San Gabriel Petroleum Company owned by M. L. McCray and L. A. McCray. Thereafter petitioner assigned all of [33] his right, title and interest in and to all the options hereintofore mentioned and also all of his right, title and interest in and to the stock owned by him in the San Gabriel Petroleum Company, being one-third of the outstanding stock thereof, to Petroleum Midway Company, Ltd. in consideration of a contract dated January 9, 1918, wherein Thomas A. O'Donnell, petitioner herein, is designated first party and Petroleum Midway Company, Ltd. second party, which, among other things, obligated the Petroleum Midway Company, Ltd.

to pay to petitioner one-third of the net proceeds derived from the operation of the properties owned by the San Gabriel Petroleum Company.

On January 7, 1918, the Petroleum Midway Company, Ltd. exercised the option to purchase the stock from M. L. McCray and L. A. McCray and entered into a contract agreeing to pay them the amounts specified in said option; after January 9, 1918, and prior to May 1, 1918, the Petroleum Midway Company, Ltd. acquired all of the assets of the San Gabriel Petroleum Company which consisted of the leases transferred to it by the three parties aforementioned and assumed all of the obligations of the San Gabriel Petroleum Company which was thereafter dissolved; during the period from January 9, 1918, to July 25, 1919, the Petroleum Midway Company, Ltd. paid the petitioner the total sum of \$64,775.48 under and pursuant to the terms of said contract dated January 9, 1918.

On or about the 25th of July, 1919, petitioner created by a written instrument, a declaration of trust, wherein he appointed the Security Trust and Savings Bank as trustee, and assigned to it all of his right, title and interest in and to said contract; [34] from the 25th of July, 1919, to and including December 31, 1922, the Petroleum Midway Company paid to Security Trust and Savings Bank as trustee under that declaration of trust No. 5106 the total sum

of \$348,896.66, by virtue of the contract of January 9, 1918.

During the year 1923 Security Trust and Savings Bank, as trustee in that certain trust No. 5106, received the sum of \$32,080.85 from the Petroleum Midway Company, Ltd. by virtue of the contract of January 9, 1918, and the bank paid to itself as trustee commissions and fees in the sum of \$320.81 and distributed during said year to the following persons the amounts set opposite their respective names:

Lillie O'Donnell	\$ 3,000.00
Ruth O'Donnell Tompkins	750.00
Doris O'Donnell	750.00
Mamie Litster	900.00
O'Donnell Oil & Securities Co.	26,360.15
	<hr/>
Total	\$31,760.15

On April 9, 1923, said trust No. 5106 was revoked and on April 16, 1923, petitioner created another trust known as No. 5549 wherein Security Trust and Savings Bank was appointed trustee and to which was assigned by petitioner all his right, title and interest in and to said contract of January 9, 1918. During the balance of the year 1923 said trustee under trust No. 5549 received the sum of \$83,984.08 from Petroleum Midway Company by virtue of said contract of January 9, 1918, and after paying to itself as trustee commissions and fees

in the sum of \$839.88, said trustee distributed to the following persons the amounts set opposite their respective names: [35]

Lillie O'Donnell	\$ 9,000.00
Ruth O'Donnell Tompkins	2,250.00
Doris O'Donnell	2,250.00
Mrs. Myra O'Donnell	900.00
Mrs. Winnie Tucker	900.00
Tompkins Investment Co.	67,848.16
	<hr/>
Total	\$83,148.16

Petitioner kept his accounts and reported his income for the taxable year 1923 on a cash receipts and disbursements basis.

II.

STATEMENT OF PROCEEDINGS HERETOFORE HELD.

The Commissioner of Internal Revenue, respondent herein, on the 7th day of January, 1928, mailed to petitioner what is termed a deficiency letter wherein the Commissioner proposed additional taxes for the year 1923 in the sum of \$2,201.69. In due course of time and within the sixty day period petitioner filed his appeal with the United States Board of Tax Appeals wherein he alleged, among other things, that the inclusion of income by the respondent in the sum of \$16,023.51, which gave rise to the asserted deficiency in tax by the respondent, was erroneous and illegal.

On the date of the hearing respondent confessed error in including the sum of \$16,023.51 in petitioner's net taxable income, but at the same time filed his second amended answer wherein he alleged that petitioner's net taxable income should be increased by the sum of \$114,908.31 by virtue of the receipt by the Security Trust and Savings Bank under two trusts designated as Nos. 5106 and 5549.

Respondent, in support of his contention that said sum of \$114,908.31 constituted taxable income to the petitioner, alleged that the fair market value of the rights acquired by petitioner by virtue of the contract with Petroleum Midway Company, Ltd. dated January 9, 1918, did not exceed the [36] sum of \$75,000.00. No oral testimony was presented by the respondent to substantiate his allegations of value, nor to substantiate his allegations of cost to petitioner of the said contract of January 9, 1918, the respondent's entire case having been presented to the Board on a stipulation of facts.

The Board of Tax Appeals, among other things, held that the transaction of January 9, 1918, by the terms of which petitioner transferred to Petroleum Midway Company, Ltd. his one-third stock interest in the San Gabriel Petroleum Company and options on the remaining two-thirds of such stock in consideration of his receiving one-third of the future profits of San Gabriel Petroleum Company, was a sale of property which "might or might not give rise to income dependent on the inscrutable factor

of future oil production. * * * The promise to pay one-third of future profits was not equivalent to cash nor did it have, on January 9, 1918, an ascertainable fair market value." However, the Board endeavored to establish the cost or value "whichever is the appropriate base" of petitioner's stock of the San Gabriel Petroleum Company and options at the date of their acquisition. The Board held that the transaction of June 28, 1917, was a taxable transaction and inferred that the stock had no greater value than the leases. The Board assumed that no development had been undertaken or production achieved prior to June 28, 1917, and subsequent to the acquisition of the leases in March, 1917.

The Board held that it was "impossible on the record to determine exactly the fair market value of petitioner's stock on June 28, 1917," but nevertheless that petitioner had prior to the beginning of 1923 recovered his entire cost and that therefore the entire amount received by the two trusts during the year 1923 was taxable income to petitioner. [37]

III.

DESIGNATION OF COURT OF REVIEW.

The petitioner, being aggrieved by the said findings of fact, opinion, decision and order, and being a resident of the City of Los Angeles, State of California, desires a review thereof, in accordance with the provisions of the Revenue Act of 1926, as

amended by the Revenue Act of 1928 and as further amended by the Revenue Act of 1932, by the United States Circuit Court of Appeals for the Ninth Circuit, within which circuit is located the office of the Collector of Internal Revenue to which the said petitioner made his income tax return for the year 1923.

IV.

ASSIGNMENT OF ERRORS.

The petitioner, as a basis of review, makes the following assignment of errors:

1. The Board of Tax Appeals erred in holding that the income derived during the year 1923 by the Security Trust and Savings Bank as Trustee under trusts Nos. 5106 and 5549 constituted taxable income to petitioner.

2. The Board of Tax Appeals erred in holding that petitioner derived taxable income, not reported in his income tax return, in the sum of \$114,908.31.

3. The Board of Tax Appeals erred in entering its order on June 17, 1932, determining a deficiency in tax against petitioner for the year 1923 in the amount of \$39,731.98.

4. The Board of Tax Appeals erred in failing to include in its findings of fact all of the facts contained in the stipulation entered into by and between the parties hereto, through their respective counsel, and which stipulation contained all the facts received by the Board in support of [38] respondent's affirmative allegations.

5. The Board of Tax Appeals erred in determining that the fair market value of the stock of the San Gabriel Petroleum Company acquired by petitioner on June 28, 1917, in exchange for his interest in certain leases, together with the cost on the dates acquired of the options on the remaining two-thirds of the stock of said company, was not in excess of \$413,672.14.

6. The Board of Tax Appeals erred in failing to confine its findings of fact, opinion and decision within the allegations of the pleadings.

7. The Board of Tax Appeals erred in failing to find that the cost to petitioner of his contract dated January 9, 1918, with the Petroleum Midway Company, Ltd. was in excess of \$550,000.00.

WHEREFORE, petitioner prays that this Honorable Court may review the said findings, opinion, decision and order of the United States Board of Tax Appeals and reverse and set aside the same; and that this Honorable Court direct the entry of a decision by the said Board in favor of petitioner determining that there is no deficiency in income tax for the year 1923 due from petitioner.

Petitioner prays for such other and further relief as may seem meet and proper in the premises.

THOMAS R. DEMPSEY,
A. CALDER MACKAY,
Attorneys for Petitioner,
1104 Pacific Mutual Building,
Los Angeles, California. [39]

State of California,
County of Los Angeles.—ss.

A. Calder Mackay, being duly sworn, says that he is one of the attorneys for the petitioner above named and that as such is duly authorized to verify the attached petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Board rendered herein; that he has read the said petition and is familiar with the statements therein contained, and that the facts set forth therein are true to the best of his knowledge and belief and that the said petition is filed in good faith.

A. CALDER MACKAY.

Subscribed and sworn to before me this 15th day of July, 1932.

[Seal]

LEO R. HOWLEY,

Notary Public in and for said County
and State.

My commission expires Nov. 16, 1934.

[Endorsed]: Filed July 28, 1932. [40]

[Title of Court and Cause.]

To C. M. Charest, Esq., Bureau of Internal Revenue,
Washington, D. C., Attorney for the Respondent.

Sir: Please take notice that on the 27th day of July, 1932, the undersigned presented to this Board

and filed with the Clerk thereof the petition of Thomas A. O'Donnell, a copy of which is annexed hereto, for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the final order and decision of the Board in the above entitled proceeding entered upon the records of said Board on June 17, 1932.

Dated at Washington, D. C., July 27th, 1932.

THOMAS R. DEMPSEY,
A. CALDER MACKAY,
LLOYD ANDERSON,

Attorneys for Petitioner,
Shoreham Building,
Washington, D. C.

Service of a copy of the foregoing is hereby acknowledged this 28th day of July, 1932.

C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

[Endorsed]: Filed July 28, 1932. [41]

[Title of Court and Cause.]

STATEMENT OF EVIDENCE.

The above named case came on for hearing before the Honorable E. H. Van Fossan, member of the United States Board of Tax Appeals, on the 22nd day of May, A. D. 1931, at Los Angeles, California, there being present petitioner and respondent by their respective counsel.

Thereupon counsel for respondent asked for leave to file a second amended answer to the petition and there being no objection on the part of counsel for petitioner, the Board accepted said second amended answer.

At the request of counsel for petitioner the reporter was directed by the Member to enter a general denial of the affirmative allegations of the second amended answer.

Counsel for respondent then stated that the adjustment made in the deficiency letter whereby there was determined to be a deficiency of \$2,201.69 was erroneous.

Counsel for respondent then offered and there was received in evidence a stipulation of facts, a copy of which, together with exhibits therein referred to, being hereinafter set out in full: [42]

United States Board of Tax Appeals.

Docket No. 35,341.

THOMAS A. O'DONNELL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, through their attorneys, subject to such objections as to relevancy, materiality or competency as either party may have hereto;

I.

That during March, 1917, Thomas A. O'Donnell, M. L. McCray and L. A. McCray acquired for a nominal consideration certain oil and gas leases, hereinafter more particularly described:

(a) That certain lease dated March 27, 1917, wherein G. Piuma, et al. are designated as lessors and M. L. McCray as lessee, a photostat copy of which, marked Exhibit "A" is hereinafter attached.

(b) That certain lease dated March 15, 1917, wherein Barton Darlington is designated as lessor and M. L. McCray as lessee, which lease runs for the period of twenty (20) years. [43]

(c) That certain lease dated March 15, 1917, wherein B. F. Taylor is designated as lessor and M. L. McCray as lessee, which lease runs for a period of twenty (20) years.

(d) That certain lease dated March 15, 1917, wherein Andrew Irwin is lessor and M. L. McCray is lessee, which lease runs for a period of twenty (20) years.

(e) That certain lease dated March 12, 1917, wherein William S. Prugh is designated as lessor and M. L. McCray as lessee, which lease runs for a period of twenty (20) years, copy of which marked Exhibit "B" is hereinafter attached.

(f) A photostat copy of the last-named lease is typical of the other leases hereinabove referred to except the lease described in subparagraph (a), paragraph I of this stipulation.

II.

That said leases were on June 28, 1917, transferred and assigned to the San Gabriel Petroleum Company in exchange for its outstanding capital stock, Thomas A. O'Donnell, M. L. McCray and L. A. McCray each receiving one-third ($\frac{1}{3}$) of said stock.

III.

That on December 24, 1917, and December 31, 1917, respectively, Thomas A. O'Donnell acquired certain options to purchase all of said capital stock in the San Gabriel Petroleum Company owned by

M. L. McCray and L. A. McCray. Photostat copies of said options are hereinafter attached and marked Exhibits "C" and "D".

IV.

That thereafter Thomas A. O'Donnell assigned all of his right, title and [44] interest in and to the options heretofore mentioned and also all his right, title and interest in and to the stock then owned by him in the San Gabriel Petroleum Company, being one-third (1/3) of the outstanding stock thereof, to the Petroleum Midway Company, Ltd., in consideration of the contract of January 9, 1918, wherein Thomas A. O'Donnell is designated first party, and Petroleum Midway Company, Ltd., second party, copy of said contract being attached hereto and marked Exhibit "E."

V.

That on the 7th day of January, 1918, a certain agreement was entered into between M. L. McCray and L. A. McCray, parties of the first part, and Petroleum Midway Company, Ltd., party of the second part, whereby the second party agreed to purchase and the first party agreed to sell the stock held by them in the San Gabriel Petroleum Company, copy of which agreement is hereinafter attached and marked Exhibit "F," that the Petroleum Midway Company, Ltd., exercised the afore-said options and paid to L. A. McCray and M. L. McCray on the dates indicated, the following amounts:

To L. A. McCray:

January 4, 1918	\$25,000.00
January 4, 1919	10,000.00
January 5, 1920	40,000.00

Total amount paid \$75,000.00

To M. L. McCray:

January 4, 1918	\$25,000.00
January 4, 1919	25,000.00
January 5, 1920	25,000.00

Total amount paid \$75,000.00 [45]

VI.

That after January 9, 1918 and prior to May 1, 1918 the Petroleum Midway Company, Ltd., acquired all of the assets of the San Gabriel Petroleum Company, which consisted of the leases heretofore referred to, and assumed the latter's liabilities and thereupon the latter company was dissolved.

VII.

That during the period from January 9, 1918, to July 25, 1919, the Petroleum Midway Company paid the petitioner the total sum of \$64,775.48, under and pursuant to the terms of that certain contract dated January 9, 1918, heretofore referred to, which proceeds were derived by the Petroleum Midway Company, Ltd. from the operations of the leases heretofore referred to.

VIII.

That on or about the 25th day of July, 1919, the petitioner erected by a written instrument, a Declaration of Trust, wherein he appointed the Security Trust and Savings Bank as Trustee, copy of said Declaration of Trust being attached hereto and marked Exhibit "G"; copy of the assignment transferring and conveying the property to said Trust is attached hereto and marked Exhibit "H"; that from the 25th day of July, 1919, to and including December 31, 1922, the Petroleum Midway Company, Ltd., paid to the said Security Trust & Savings Bank, as Trustee under that declaration of trust No. 5106, referred to in the beginning of this paragraph, the total sum of \$348,896.66, by virtue of the contract of January 9, 1918, and the assignment thereof referred to in this paragraph.

IX.

That during the year 1923 the Security Trust & Savings Bank, as trustee in that certain trust No. 5106, received the sum of \$32,080.85 from the [46] Petroleum Midway Company, Ltd. by virtue of the contract of January 9, 1918, and the assignment thereof referred to in paragraph VIII above. That the Bank paid to itself as trustee during said year as commission and fees the sum of \$320.81 and distributed during said year to the following persons the amounts set opposite their respective names:

Lillie O'Donnell	\$3,000.00
Ruth O'Donnell Tompkins	750.00
Doris O'Donnell	750.00
Mamie Litster	900.00
O'Donnell Oil & Securities Co.	26,360.15
	<hr/>
Total	\$31,760.15

X.

That on April 9, 1923, said trust No. 5106 was revoked, copy of which revocation is attached hereto and marked Exhibit "I."

XI.

That on April 16, 1923, petitioner by a written instrument dated April 16, 1923, created declaration of trust No. 5549, wherein the Security Trust & Savings Bank was appointed trustee, copy of which declaration of trust is attached hereto and marked Exhibit "J"; that during the year 1923 the Security Trust & Savings Bank as Trustee in that certain trust No. 5549, received the sum of \$83,984.08, from the Petroleum Midway Company, Ltd. by virtue of the contract of January 9, 1918, and the assignment thereof to the trust as referred to in this paragraph. The bank paid to itself as Trustee during the said year as commissions and fees the sum of \$839.88 and distributed during said year to the following persons the amounts set opposite their respective names:

Lillie O'Donnell	9,000.00
Ruth O'Donnell Tompkins	2,250.00
Doris O'Donnell	2,250.00
Mrs. Myra O'Donnell	900.00
Mrs. Winnie Tucker	900.00
Tompkins Investment Co.	67,848.16
	<hr/>
Total	\$83,148.16

[47]

XII.

It is further stipulated and agreed that the petitioner herein kept his accounts and reported his income for the taxable year involved in this appeal on cash receipts and disbursements basis.

THOMAS R. DEMPSEY,
A. CALDER MACKAY,
Attorneys for Petitioner.

C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

ALVA C. BAIRD,
Special Attorney,
Bureau of Internal Revenue. [48]

LEASE
BETWEEN
MESSRS. G. PIUMA AND P. BRIANO
AND
MESSRS. L. A. AND M. L. McCRAY

Rental due in advance 1st day of every month.

Address: 608 San Fernando Street. [49]

G. Piuma & P. Briano
Box 18
El Monte, California

SAN GABRIEL PETROLEUM CO.

EXHIBIT A.

3-27-17

INDENTURE OF LEASE AND AGREEMENT, made and entered into this twenty-seventh day of March, 1917, by and between G. Piuma and P. Briano hereinafter called the Lessors, the parties of the first part, of the County of Los Angeles, State of California, and M. L. McCray and L. A. McCray, hereinafter called the Lessees, the parties of the second part, of the County of Los Angeles, State of California.

WITNESSETH: That for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States paid by the Lessees to the Lessors, the receipt of which is hereby acknowledged, and the royalty hereinafter stated, and the performance of the covenants and undertakings of the Lessees, hereinafter set forth, the Lessors hereby grant unto

said Lessees for a term of fifteen years from the date hereof, the exclusive right and privilege to enter upon, prospect, to sink wells for, obtain and remove, subject to conditions hereinafter mentioned, all crude oil, petroleum, gas, brea, asphaltum and all kindred substances in and on the following described land, to-wit: [50]

Lot 6, Block 2s, Range 11, Rancho La Merced, as per Bk. 1, P. 73 of Lic. Survey Records of L. A. Co. and more particularly described as follows: 15.724 acs. (Ex of Rd) com. N. 16° 30' E 19.51 chs. and N 64° 45' W. 17.30 chs. and N 24° 45' E 20.535 chs. from Sta. 13, Ro La Merced th N 24° 45' E 8.925 chs. th S 65° 15' E 18.32 chs. th S 24³/₄° W 6 ch th S 38° 30' W 8.84 chs th N 25° 15' E 3.93 chs th N 62° 5' W 17.40 chs to beginning.

1. This lease is granted upon the conditions that Lessees shall within six months hereof, wholly at their own expense, place a derrick and the other necessary machinery upon some portion of said premises and shall within said six months commence sinking a well on said land for oil. Said Lessees shall furnish all machinery, tools and labor which may be necessary to obtain and remove said substances which may be discovered in or on said land, shall maintain, operate and conduct the same and shall prosecute said work with all reasonable diligence during said term in a miner-like manner. It is further agreed that the Lessees shall after discovering oil in paying quantities in first well and

thereafter as soon as oil is found in paying quantities keep one string of tools continuously at work until, at least, four wells have been drilled upon said premises. Lessees agree to drill the said four wells on said lease within two years after drilling shall have commenced on first well, and, in case four wells have not been completed within such time Lessees agree to surrender all land, except two acres for each then producing well. It is further understood that providing that Lessees shall commence operations within the time herein provided and comply with all of the other provisions of this lease, that there shall be no obligations upon them to commence the construction of a second well unless and until they shall strike oil in paying quantities in the first well providing they shall prosecute the work of drilling the first well with [51] proper equipment with due diligence, in good faith, and continuously.

2. Each well to be sunk as provided shall be pumped to its full capacity for oil continuously and without interruption from completion to the end of said fifteen year term, or until all the oil is exhausted, except when prevented by unavoidable accidents.

3. The Lessees and their agents may enter upon said premises and rights of way and may use and occupy said lands for pipe lines, tanks for handling of oil, and all other similar products, Lessees may use any portion of the lands now owned by Lessors, for the purpose of laying pipe lines, and shall lay

all pipe lines at least twenty inches below the surface, and said pipe lines shall be so laid as to do the least possible injury to all persons interested in said property. Said land and rights of way to be used and said pipe lines to be so laid as not to interfere with other uses of said lands, and to do the least possible injury to growing crops, buildings, fences or other improvements thereon.

4. It is further agreed that during the term of this lease, Lessor and others acquiring rights from it may use the land herein described for cultivation and for any other purposes which will not materially interfere with the use and rights granted to Lessees.

5. And further, Lessees agree to pay to the Lessors from the date of these presents the sum of Eighty and 00/100 Dollars (\$80.00) per month, said payment to be made not later than the first day of every month, till the said well is completed or abandoned, and thereafter such monthly payments shall stop. If for any reason said Lessees fail to pay the monthly payments of Eighty Dollars (\$80.00) [52] to Lessors, then this lease shall become null and void and said Lessees' rights shall terminate.

6. To pay to the Lessor, as royalty, delivered in tanks at the wells, one-eighth ($1/8$) of all oil, or kindred products saved from said wells drilled on the demised land up to three hundred (300) barrels per day of twenty-four hours, and one-seventh ($1/7$) royalty on any and all wells producing above three

hundred (300) and not exceeding five hundred (500) barrels, and one-sixth ($1/6$) royalty on any and all wells producing over five hundred (500) and not exceeding two thousand (2000) barrels, and one-fifth ($1/5$) royalty on all wells producing two thousand barrels and over, after deducting from the gross production the amount of oil or other products which may be used in the development and operations of said wells.

7. Lessees agree to keep full, accurate and complete books of record, containing records of quantities and kinds of all substances produced. Lessors or their agents shall have the right at all times to enter upon the land and works of Lessees, to examine and test the same, to examine Lessees' books and records in detail, in order to test the accuracy of any statement of account, which may be rendered by Lessees as herein provided. Lessors and their agents shall be allowed every reasonable privilege to enable them to investigate all matters concerning the royalty due Lessors.

8. Between the first and fifteenth day of every month during the term of this lease, Lessees shall render to Lessors written statements showing the quantities and kinds of all substances obtained from the wells of the property herein described during the previous calendar month; on the fifteenth of the month, Lessees [53] shall deliver or pay Lessors the royalty due as provided herein, on all substances obtained the previous calendar month.

9. It is agreed that on the fifteenth day of each month when settlement is made, as aforesaid, the Lessors shall have the option of receiving it in money or in substance; if they elect to receive it in money, said Lessees shall pay to said Lessors the value of their royalty, or their proportion of the substance pumped or obtained by Lessees during the previous month, in money, said amount due to be figured at the market prices of oils received by Lessees. If Lessors elect to receive their royalty in the substance itself, Lessees shall deliver to Lessors the royalty in tanks on the leased land hereinafter provided. Lessors shall keep the Lessees advised thirty days in advance to the fifteenth day of each month as to whether they shall elect to receive their royalty in substance or in money, otherwise said Lessors shall receive their royalty in money.

10. Lessees agree to properly store all oil obtained on said premises including the royalty of Lessor for thirty days at their own expense and cost.

11. All water developed or discovered during the Lessees' term on said land shall be the property of the Lessors, but Lessees shall have free use of sufficient water thereof to operate said lease on said land.

12. Lessees shall not sell or dispose of said water to other parties nor remove it from said land except as is necessary in connection with their work thereon. [54]

13. Lessees shall without cost to Lessors pay for all labor, material, supplies, tools, machinery and improvements used in said work or constructed, or erected in connection therewith, on said land, and shall not suffer or permit any mechanic's, laborer's or materialmen's liens or any other lien or charge to be filed, made or levied on said land or any part thereof; in case any lien shall be filed or levied thereon, Lessees shall protect and defend Lessors and their land from any liability, expense or damage on account of same, and shall pay damages, costs, attorney's fees, and expenses of every nature which may be incurred by Lessors in payment of, or in defending, or otherwise clearing said property from any claims of liens as aforesaid.

14. Lessees shall pay all taxes assessed upon said land, during the term of this lease, in excess of taxes levied or assessed on said land for the year 1917 in so far said excess is caused by the production of oil from said land and shall pay all taxes and assessments which may be levied upon the improvements, machinery and works placed thereon by Lessees, or which may be levied separate from the land upon the rights hereby granted embracing any mineral valuation assessment or on the wells sunk thereon or substances taken therefrom, except upon the substances or money which may be delivered or paid to Lessors as royalty hereunder, the taxes upon which royalty shall be paid by Lessors.

15. In case gas is found in sufficient quantities for development purposes on the land hereby leased, the Lessees are to have the right to use the same for fuel, lights and development purposes, without compensation to Lessors. The Lessors shall have [55] the right to have all gas necessary for heating and lighting purposes without compensation to the Lessees. In case gas is used for commercial purposes Lessors shall be entitled to a one-seventh (1/7) royalty, payable in United States money.

16. It is further agreed that no well shall be drilled within two hundred (200) feet of any dwelling now erected on said land without the written consent of the owner of such dwelling or dwellings.

17. The Lessors shall not be held responsible by the Lessees for any hostile invasion of any unwarranted entry upon said premises by any party whomsoever, or for any damage sustained thereby, but the Lessors shall employ due diligence at all times in defending their title to said premises above described and in ejecting any trespassers therefrom.

18. In the event the said Lessees shall fail to commence to work, or drill continuously as provided, or to pay the rent or royalty above provided for, or shall fail to perform any covenant contained herein, the Lessors may immediately upon such default enter upon said land and take possession thereof.

19. It is further agreed that time is strictly of the essence of this agreement and of each and all of the terms and conditions thereof.

20. If at any time the price of oil shall fall below fifty cents (50¢) a barrel at the wells, Lessees may cease drilling wells upon the premises herein described, for the time that the said price of oil shall remain below fifty cents a barrel, the cessation of such drilling operations shall not work a forfeiture of this lease. [56]

21. At the normal termination of this lease, that is, fifteen years from date hereafter, provided the said Lessees shall at that time and at all times during the continuation of this lease comply with all the terms and conditions herein contained and shall in no way be indebted to said Lessors, the Lessees shall have the privilege of ten years extension of this lease by paying the Lessors three eighths ($\frac{3}{8}$) of all oil produced from said lease, on the same condition as heretofore provided.

22. At the termination of this lease said Lessees shall have the right to remove from said property all machinery and equipment placed thereon by said Lessees during the term of this lease, including casing, etc. Said Lessees shall begin the removal of said property within sixty days from the termination of this lease and diligently prosecute said work. Any property not so removed within the period of three months from the termination of this lease shall become and remain the property of said Lessors.

23. In the event of a cancellation of this lease during the life thereof or any time after its termination, said Lessees shall immediately return to

said Lessors this lease or other satisfactory document showing the cancellation of same.

24. Lessees shall from time to time make proper sump holes and other provisions for caring for all flowing wells or waste oil, preventing same from being spread upon lands adjoining the wells. In the event of any damage being done by reason of uncontrolled or wasted oil, said Lessees will protect and save harmless Lessors from any and all claims arising for any damage therefrom; [57] and said Lessees agree at any time when this lease may be terminated or end by limitation to refill and put in proper condition the surface of the ground where sump holes have been made so that the same may again be cultivated; and, Lessees shall be considered as not having completed the conditions of this lease and entitled to termination of same nor to remove machinery or casing until said sump holes have been properly filled and debris removed therefrom.

25. Said Lessees agree to in no way do or commit any act which in any way will embarrass the title to the land herein leased or attempt to create upon it any indebtedness by reason of direct obligations in the nature of the issuance of bonds, debentures, or notes which in any way by reason of their issuance shall be made to appear to in any way attach to the land. Any attempt to do so will in itself be construed as a violation and forfeiture of this lease.

26. Notwithstanding any other provision or requirement of this lease, the Lessees shall be excused

for any delay, suspension or failure to drill or operate any well or wells hereunder which may be occasioned by strikes, lockouts, riots, invasion, war, acts of the elements, unavoidable accidents, the inability or refusal of manufacturers or dealers or of transportation companies to make deliveries of necessary supplies, or other causes without the control of the Lessees. [58]

27. It is further agreed that all of the terms and conditions hereof shall be binding upon and inure to the benefit of the heirs, executors, successors, and assigns of the respective parties hereto.

IN WITNESS WHEREOF said Lessors have caused these presents to be executed in duplicate by Lessors under their seal, and the Lessees have hereunto set their hands the day and the year first above written.

G. PIUMA

P. BRIANO

Lessors.

M. L. McCRAY

L. A. McCRAY

Lessees.

State of California,
County of Los Angeles.—ss.

On this 30th day of March, in the year nineteen hundred seventeen, A. D., before me, Harriet E. Beers, a Notary Public in and for the County of Los Angeles, State of California, residing therein,

duly commissioned and sworn, personally appeared G. Pioma and P. Briano, Lessors, and M. L. McCray and L. A. McCray, Lessees, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said county and day and year in this certificate first above written.

[Seal] HARRIET E. BEERS,
Notary Public in and for Los Angeles County,
State of California. [59]

LEASE
BETWEEN
WILLIAM S. PRUGH
AND

M. L. McCRAY and L. A. McCRAY [60]

EXHIBIT "B".

PETROLEUM MIDWAY CO., LTD.

INDENTURE OF LEASE AND AGREEMENT, made and entered into this 12th day of March, 1917, by and between WILLIAM S. PRUGH, hereinafter called the Lessor, the party of the first part, of the County of Los Angeles, State of California, and M. L. McCRAY and L. A. McCRAY, hereinafter called the Lessees, the party of the second part, of the County of Los Angeles, State of California,

WITNESSETH: That for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States paid by the Lessees to the Lessor, the receipt of which is hereby acknowledged, and the royalty hereinafter stated, and the performance of the covenants and undertakings of the Lessees, hereinafter set forth, the Lessor hereby grants unto said Lessees for a term of twenty years from the date hereof, the exclusive right and privilege to enter upon, prospect, to sink wells for, obtain and remove, subject to conditions hereinafter mentioned, all crude oil, petroleum, gas, brea, asphaltum and all kindred substances in and on the following described land, to-wit:

Situated in the County of Los Angeles, State of California and described as follows:

Lot Fifty-three (53) of Tract Number Seven Hundred one (701), in the Rancho Potrero Grande, as per map recorded in Book 16, pages 110 and 111 of Maps, in the office of the County Recorder of said County. [61]

1. This lease is granted upon the condition that Lessees shall within Twelve months from date hereof, wholly at their own expense, place a derrick and the other necessary machinery upon some portion of said premises and shall within said Twelve months commence sinking a well on said land for oil, and shall prosecute the work of sinking said well continuously from commencement thereof until oil is obtained therefrom in paying quantities, or to

the depth of at least twenty-five hundred feet. Said Lessees shall furnish at their own expense all machinery, tools and labor which may be necessary to obtain and remove said substances which may be discovered in or on said land, shall maintain, operate and conduct the same and shall prosecute said work continuously with all reasonable diligence during said term in a miner-like manner. It is further agreed that the Lessees shall after discovering oil in paying quantities in said first well thereafter keep one string of tools continuously at work until at least three wells have been drilled upon said premises. It further being understood that providing the Lessees shall commence operations within the time herein provided and comply with all of the other provisions of this lease, that there shall be no obligations upon them to commence the construction of a second well unless and until they shall strike oil in paying quantities in the first well, providing they shall prosecute the work of drilling the first well with proper equipment, with due diligence, in good faith, and continuously from time of commencement of drilling thereof. It being further understood that within sixty days after Lessees shall strike oil in paying quantities in the [62] first well they shall commence operations on the wells which they are obliged to drill in accordance with the provisions above named, and shall prosecute the work of drilling such other wells with proper equipment,

due diligence, in good faith and continuously from the time of commencing drilling thereof.

2. Each well to be sunk as provided shall be pumped to its full capacity for oil continuously and without interruption from completion thereof to the end of said twenty year term, or until all the oil is exhausted, except when prevented by unavoidable accidents.

3. The Lessees and their agents may enter upon said premises and may use and occupy said lands for pipe lines, tanks for handling of oil, and all other similar products, produced on said premises only. Lessees may use any portion of the lands, now owned by Lessor, for the purpose of laying pipe-lines, and shall lay all pipe-lines at least twenty inches below the surface, and said pipe-lines shall be so laid as to do the least possible injury to all persons interested in said property. Said land to be used and said pipe-lines to be so laid as not to interfere with other uses of said lands, and to do the least possible injury to fruit trees, growing crops and shade or ornamental trees, buildings, fences or other improvements thereon.

4. It is further agreed that during the term of this lease, Lessor, and other acquiring rights from him, may use the land herein described for a citrus grove, and cultivate the same, and for residence purposes for himself and family, and for [63] and other purposes which will not materially interfere with the use and rights granted to Lessees.

5. And further, Lessees agree to pay to the Lessor the sum of Ten and 00/100 Dollars (\$10.00) per acre per month from March 12, 1917, said payment to be made in advance and not later than the twelfth of every month, till drilling operations have actually been commenced by the Lessees and thereafter such monthly payments shall stop. If for any reason said Lessees fail to pay the monthly payments of Ten and 00/100 Dollars (\$10.00) per acre to Lessor, then this lease shall at the option of Lessor become null and void and said Lessees' rights shall terminate.

6. Lessees further agree to pay to the Lessor, as royalty, delivered in tanks at the wells, one-eighth ($\frac{1}{8}$) of all oil, or kindred product saved from any of said wells drilled on the said demised land up to one hundred barrels per day of twenty-four hours, one-seventh ($\frac{1}{7}$) of all oil, or kindred products, saved from any and all wells producing more than one hundred (100) barrels and not exceeding three hundred (300) barrels per day of twenty-four hours, one-sixth ($\frac{1}{6}$) of all oil, or kindred products, saved from any and all wells producing more than three hundred (300) barrels and not exceeding one thousand (1000) barrels per day of twenty-four hours, and one-fifth ($\frac{1}{5}$) of all oil, or kindred products, saved from any and all wells producing more than one thousand (1000) barrels per day of twenty-four hours, after deducting from the gross production the amount of oil or other products which may be used in the development and opera-

tions of said wells, it being understood that under the above provisions [64] of this paragraph that the wells producing oil, or other kindred products shall yield to the said Lessor as follows:

A well producing 100 barrels or under one-eighth thereof;

A well producing more than 100 barrels and not exceeding 300 barrels one-seventh of the total production thereof;

A well producing more than 300 barrels and not exceeding 1000 barrels one-sixth of the total production thereof;

A well producing more than 1000 barrels one-fifth of the total production thereof.

7. Lessees agree to keep full, accurate and complete books of record, containing records of quantities and kinds of all substances produced. Lessor or his agents shall have the right at all times to enter upon the land and works of Lessees, to examine and test the same, to examine Lessees' books and records in detail and make copies thereof, in order to test the accuracy of any statement of account, which may be rendered by Lessees as herein provided. Lessor and his agents shall be allowed every reasonable privilege to enable him to investigate all matters concerning the royalty due Lessor.

8. Between the first and fifteenth day of every month during the term of this lease, Lessees shall render to Lessor written statements showing the quantities and kinds of all substances obtained from

the walls of the property herein described during the previous calendar month, on the fifteenth of each and every month during the term of this lease, Lessees shall deliver or pay Lessor the royalty due as provided herein, on all substances obtained the previous calendar month. [65]

9. It is agreed that on the fifteenth day of each month when settlement is made, as aforesaid, the Lessor shall have the option of receiving it in money or in substance; if he elects to receive it in money, said Lessees shall pay to said Lessor the value of his royalty at the prevailing market price on his proportion of the substance pumped or obtained by Lessees during the previous month, in money, said amount due to be figured at the prevailing market prices of oils at date of each monthly settlement. If Lessor elects to receive his royalty in the substances themselves, Lessees shall deliver to Lessor the royalty in tanks on the leased land hereinafter provided. Lessor shall keep the Lessees advised thirty days in advance as to whether he shall elect to receive his royalty in substances or in money, otherwise said Lessor shall receive his royalty in money. As an additional option hereunder Lessor shall have the right to join for sale of his royalty in any contract that Lessees may be entering into for sale of their portion of said substances and Lessees shall give Lessor the opportunity to so join with them by giving him five days notice thereof.

10. Lessees agree to properly store all oil obtained on said premises, including the royalty of

Lessor for thirty days at their own expense and cost.

11. All water developed or discovered during the Lessees' term on said land shall be the property of the Lessor, but Lessees shall have free use of sufficient water thereof to operate said lease on said land. [66]

12. Lessees shall not sell or dispose of said water to other parties nor remove it from said land except as is necessary in connection with their work thereon.

13. In case a well sunk for oil or other substance prove of no value for such purposes but is good as a water well, Lessees shall, if said Lessor so desires, leave the casing therein upon being paid seventy-five (75%) per cent. of the value of the casing necessary to be left therein for water purposes, at the then prevailing market prices; except in case the Lessees use such water well in their said work any time after completion of said well, then said casing shall be left in the well and Lessor shall not be required to pay therefor. Lessees shall give Lessor ten (10) days written notice of its intention to pull the casing in any well containing water.

14. Lessees shall without cost to Lessor pay for all labor, materials, supplies, tools, machinery and improvements used in said work hereunder or constructed, or erected in connection therewith, on said land, and shall not suffer or permit any mechanic's, laborer's, or material men's liens or any

other lien or charge to be filed, made or levied on said land or any part thereof; in case any lien shall be filed or levied thereon, Lessees shall protect and defend Lessor and his land from any liability, expense or damage on account of same, and shall pay damages, costs, attorney's fees, and expenses of every nature which may be incurred by Lessor in payment of, or in defending, or otherwise clearing said property from any claims of liens as aforesaid. [67]

15. Lessees shall pay all taxes assessed upon said land during the term of this lease in excess of taxes levied or assessed on said land for the year 1917, in so far as said excess is caused by the production of oil from said land and shall pay all taxes and assessments which may be levied upon the improvements, machinery and works placed thereon by Lessees, or which may be levied separate from the land upon the rights thereby granted embracing any mineral valuation assessment or valuation assessment on the wells sunk thereon or substances taken therefrom, except upon the substances or money which may be delivered or paid to Lessor as royalty hereunder, the taxes upon which royalty shall be paid by Lessor.

16. In case gas is found in sufficient quantities for development purposes on the land hereby leased, the Lessees are to have the right to use the same for fuel, lights and development purposes, without compensation to Lessor and said Lessor shall have the right to use for domestic purposes any gas that

may remain after said use thereof by Lessees; in case gas is used for commercial purposes Lessor shall be entitled to a one-seventh ($1/7$) royalty.

17. It is further agreed that no well shall be drilled within two hundred (200) feet of the dwelling house now on said premises, nor between said dwelling house and the highway boulevard and immediately in front of said dwelling, nor within one hundred fifty (150) feet of any barn or garage now erected on said land, without the written consent of the owner of such dwelling or dwellings, and such outbuilding. [68]

18. The Lessor shall not be held responsible by the Lessee for any hostile invasion of any unwarranted entry upon said premises by any party whomsoever, or for any damage sustained thereby, but the Lessor shall employ due diligence at all times in defending his title to said premises above described and in ejecting any trespassers therefrom.

19. In the event said Lessees shall fail to commence to work, or drill continuously as provided, or to pay the rent or royalty above provided for, or shall fail to perform any covenant contained herein, the Lessor may at his option immediately upon such default enter upon said land and take possession thereof, or at his option take action to enforce the terms thereof.

20. It is further agreed that time is strictly of the essence of this agreement and of each and all of the terms and conditions thereof.

21. If at any time the price of oil shall fall below fifty (50¢) cents a barrel at the wells, Lessees may cease pumping oil or drilling wells upon the premises herein described, for the time that the said price of oil shall remain below fifty (50¢) cents a barrel, the cessation of such operations shall not work a forfeiture of this Lease.

22. At the normal termination of this lease, that is, twenty years from date hereafter, provided said Lessees shall at that time and at all times during the continuation of this lease comply with all the terms and conditions herein contained and shall in no way be indebted to said Lessor, and in the event [69] of the failure to satisfactorily arrange with said Lessor for a continuation or extension of said lease or to arrive at a satisfactory arrangement to continue pumping wells being pumped at that time, said Lessees shall remove from said property and said Lessees shall have the right to remove from said property all machinery and equipment placed thereon by said Lessees during the term of this lease, including casing, etc., except as belong to such wells which may have been designated or used as water wells. Also in the removal of any casing from the ground said Lessees shall use care in not destroying the water bearing stratas in said wells and such casing as is necessary to remain in said wells to maintain them as water wells shall not be removed therefrom provided said Lessor elects to have same remain by paying 20% of the value thereof as second hand casing. Said Lessees shall begin

the removal of said property within sixty days from the termination of this lease and diligently prosecute said work. Any property not so removed within the period of six months from the termination of this lease shall become and remain the property of said Lessor.

23. In the event of a cancellation of this lease during the life thereof or any time after its termination, said Lessees shall immediately return to said Lessor this lease cancelled, if unrecorded, and if recorded, a quit-claim deed showing the cancellation of same.

24. Lessees shall from time to time make proper sump holes and other provisions for caring for all flowing wells or waste oil, preventing same from being spread upon lands adjoining the wells. [70]

In the event of any damage being done by reason of uncontrolled or wasted oil, said lessees will protect and save harmless lessor from any and all claims arising from any damage therefrom; and said lessees agree at any time when this lease may be terminated or ended by limitation to refill and put in proper condition the surface of the ground where sump holes have been made so that the same may again be cultivated; and, lessees shall be considered as not having completed the conditions of this lease and entitled to termination of same or to remove machinery or casing until said sump holes have been properly filled and debris removed therefrom.

25. It is understood that said lands of lessor are now occupied by citrus trees and some walnut trees in a high state of cultivation, and it is hereby agreed that lessees shall pay to lessor the sum of \$20.00 in lawful money of the United States for every citrus or walnut tree removed or destroyed in the drilling for said substances hereinbefore named and in the erecting of machinery, derricks, tanks, and equipment for the purpose of said drilling for said substances; and said lessees shall also pay to said lessor the sum of \$20.00 for each and every citrus or walnut tree removed or destroyed by the erection of tanks for the storage of said substances when obtained, or for the construction of roadways or pipe-lines.

It is understood that any such citrus or walnut tree shall be deemed destroyed under the provisions of this paragraph when the same is so hedged about or confined by the work or equipment operated by lessees hereunder that said citrus or [71] walnut tree, or trees, cannot be cultivated or irrigated.

26. Said lessees agree to in no way do or commit any act which in any way will embarrass the title to the land herein leased or attempt to create upon it any indebtedness by reason of direct obligations in the nature of the issuance of bonds, debentures or notes which in any way by reason of their issuance shall be made to appear to in any way attach to the land. Any attempt so to do will in itself be

construed as a violation and forfeiture of this lease.

27. It is hereby agreed that this lease shall not be assigned or transferred by said lessees without the written consent of the said lessor.

28. Notwithstanding any other provision or requirement of this lease, the lessees shall be excused for any delay, suspension or failure to drill or operate any well or wells hereunder which may be occasioned by strikes, lockouts, riots, invasion, war, acts of the elements, unavoidable accidents, the inability or refusal of manufacturers or dealers, or of transportation companies to make deliveries of necessary supplies.

29. It is further agreed that all of the terms and conditions hereof shall be binding upon and inure to the benefit of the heirs, administrators, executors and assigns of the respective parties hereto, subject, however, to the provisions of paragraph 27 of this lease. [72]

State of California,
County of Los Angeles.—ss.

On this 28th day of March, in the year nineteen hundred and seventeen, A. D., before me, Mary E. Hall, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared M. L. McCray and L. A. McCray, personally known to me to be the persons whose names

are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

MARY E. HALL,

Notary Public in and for Los Angeles
(General) County, State of California.

State of Illinois,
Cook County.—ss.

I, Robert M. Sweitzer, County Clerk of the County of Cook, do hereby certify that I am the lawful custodian of the official records of Notaries Public of said County, and as such officer am duly authorized to issue certificates of magistracy, that M. Flynn, whose name is subscribed to the proof of acknowledgment of the annexed instrument in writing, was at the time of taking such proof of acknowledgment, a Notary Public in and for Cook County, duly commissioned, sworn and acting as such and authorized to take acknowledgments and proofs of deeds or conveyances of lands, tenements or hereditaments, in said State of Illinois, and to administer oaths; all of which appears from the records and files in my office; that I am well acquainted with the handwriting of said Notary and verily believe that the signature to the said proof of acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the County of Cook at my office in the City of Chicago, in the said County, this 6th day of April 1917.

ROBERT M. SWEITZER,
County Clerk. [73]

IN WITNESS WHEREOF said lessor and the lessees have hereunto set their hands in duplicate the day and year first above written.

WILLIAM S. PRUGH,
M. L. McCRAY,
L. A. McCRAY.

State of Illinois,
County of Cook.—ss.

On this 6th day of April, in the year nineteen hundred and seventeen, A. D., before me, M. Flynn, a Notary Public in and for the said County of Cook, State of Illinois, residing therein, duly commissioned and sworn, personally appeared William S. Prugh, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

[Seal]

M. FLYNN,
Notary Public. [74]

EXHIBIT C.

December 24th, 1917.

Mr. Thomas O'Donnell,
Security Bldg.,
City.

Dear Sir:

I will sell you 235 shares of San Gabriel Petroleum Company stock for \$75,000, payable \$25,000 on January 6th, 1918, balance in two equal annual installments, with interest from date of sale until paid at the rate of 5% per annum, represented by your promissory notes.

This price is to be net to me over and above all stockholders and other liabilities for which I may be responsible at the date of sale, including note at Farmers & Merchants National Bank. At the time of sale I will want this note cancelled and returned to me, together with a letter from the bank releasing me from stockholders liability. I will also want your guarantee to hold me free of all stockholders and other liability.

This offer must be accepted and the transaction closed on or before January 6th, 1918, or the same will be null and void.

Yours very truly,

(signed) M. C. McCRAY.

For value received, I hereby sell, assign and transfer unto the Petroleum Midway Company, Limited, a corporation duly incorporated, organized and existing under and by virtue of the laws of

the State of California, the foregoing option, together with all my right, title and interest in and to said stock holdings therein described, and all my rights of any nature whatsoever arising therefrom or thereunder.

WITNESS my hand and seal this 4th day of January, 1918.

[Seal] THOS. A. O'DONNELL. [76]

EXHIBIT D.

December 31, 1917.

Mr. Thos. A. O'Donnell,
1004 Security Bldg.,
Los Angeles, California.

Dear Sir:

For a consideration of \$1.00, receipt of which is hereby acknowledged, I grant you an option to purchase my stock and all interest in the San Gabriel Petroleum Company until January the 6th, 1918, the purchase price for said stock and interest to be \$75,000.00, payable as follows:

\$25,000.00 cash on the exercise of your option to purchase, the balance of \$50,000.00 to be paid in five annual installments of \$10,000.00 each.

- | | | |
|---|------|--|
| 3 | 1917 | \$10,000.00 to be paid on January 6, 1919, |
| 4 | 1920 | \$10,000.00 to be paid on January 6, 1920, |
| 5 | 1921 | \$10,000.00 to be paid on January 6, 1921, |
| 6 | 1922 | \$10,000.00 to be paid on January 6, 1922, |
| | | and |
| 7 | 1923 | \$10,000.00 to be paid on January 6, 1923. |

The deferred payments to bear interest at the rate of 5% per annum, payable semi-annually.

The foregoing option is given with the understanding that said San Gabriel Petroleum Company is indebted to the bank to the extent of \$45,000.00.

It is also understood that if this option is exercised you will assume all responsibility in connection with said indebtedness and relieve me as guarantor of any existing notes at the time transfer is made.

Yours very truly,

L. A. McCray.

For value received, I hereby sell, assign and transfer unto the Petroleum Midway Company, Limited, a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of California, the foregoing option, together with all my right, title and interest in and to said stock holdings therein described, and all my rights of any nature whatsoever arising therefrom or thereunder.

WITNESS my hand and seal this 4th day of January, 1918.

[Seal]

Thos. A. O'Donnell. [77]

EXHIBIT E.

AGREEMENT, made and entered into this 9th day of January, 1918, by and between T. A. O'DONNELL, hereinafter called first party, and PETROLEUM MIDWAY COMPANY, LTD., a corporation hereinafter called second party.

WHEREAS, First party is the owner of one-third ($1/3$) of the issued and outstanding stock of the SAN GABRIEL PETROLEUM COMPANY, a corporation; and

WHEREAS, First party has offered to sell the same to second party for one-third ($1/3$) of the net profits resulting from the development and operation of the properties described and enumerated in the leases, contracts and agreements now owned by said San Gabriel Petroleum Company, and second party desires to accept said offer to sell said property; and

WHEREAS, it is the purpose and intent of second party, as owner of all the issued and outstanding capital stock of said San Gabriel Petroleum Company, to acquire all of its assets and to bring about its dissolution and dis-incorporation;

NOW THEREFORE, For and in consideration of the mutual promises and covenants hereinafter contained, the parties hereto agreed as follows:

(a) First party hereby agrees to sell, assign, transfer and set over, and does by these presents sell, assign, transfer and set over unto the second

party, his entire stockholdings in the said San Gabriel Petroleum Company for and in consideration of the payment by second party of one-third ($1/3$) of the net profits received by second party from the development and operation of the properties described and enumerated in the leases, contracts and agreements now owned by said San Gabriel Petroleum Company, for and during the full, unexpired term or terms of said leases, contracts and agreements, and each of them.

(b) Second party agrees to purchase, and does hereby purchase, all of said first party's stockholdings in said San Gabriel Petroleum Company, and agrees to pay therefor, at the times and in the manner hereinafter specified, one-third ($1/3$) of the net profits received by it, its successors or assigns, from the development and operation of the properties described and enumerated in the leases, contracts and agreements now owned by said San Gabriel Petroleum Company, for and during the full, unexpired term or terms of said leases, contracts and agreements and each of them. [78]

Second party further agrees to furnish such sum or sums of money as may be necessary to pay the debts of said San Gabriel Petroleum Company, and to pay the same, and to furnish such sum or sums of money as may from time to time be necessary to carry on the development of the said properties now owned by said San Gabriel Petroleum Company.

Second party further agrees to comply with all the terms and conditions of the various leases, contracts and agreements now owned by said San Gabriel Petroleum Company, and to do and perform each and all such acts and things as may be necessary to protect said leases, contracts and agreements from cancellation or forfeiture.

Second party further agrees to acquire from said San Gabriel Petroleum Company all its assets, rights and properties, and to dissolve and disincorporate said company.

And it is further understood and agree, by and between the parties hereto, that the net profits received by second party from the development and operation of said leasehold interests and properties shall be ascertained and determined quarterly, for quarters ending respectively on March 31, June 30th, September 30th, and December 31st, of each year, and in ascertaining and determining same, there shall be deducted from the gross receipts, in addition to other deductions, a sum of money equal to six (6%) per cent per annum, figured on the net advances made by second party for the payment of the debts of said San Gabriel Petroleum Company and for the development of its properties, and when the net profits have so been ascertained, one-third ($\frac{1}{3}$) thereof shall be paid over to first party within Twenty (20) days next succeeding the end of each quarter.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate the day and year first above written.

THOS. A. O'DONNELL,
PETROLEUM MIDWAY
COMPANY, LTD.

By I. W. FUQUA,

Pres.

By NORMAN BRIDGE,

Secy. [79]

EXHIBIT F.

AGREEMENT, Made and entered into this 7th day of January, 1918, by and between M. L. McCRAY and L. A. McCRAY, hereinafter called first parties, and the PETROLEUM MIDWAY COMPANY, LTD., a corporation, hereinafter called second party.

WHEREAS, second party has acquired from Thos. A. O'Donnell certain options to purchase the stock holdings of first parties in the San Gabriel Petroleum Company, a corporation, and has agreed to purchase said stock, upon the terms and conditions in said options set forth; and

WHEREAS, second party has agreed to purchase the stock holdings of the said Thos. A. O'Donnell, in said company, which with the stock holdings herein agreed to be purchased from first parties, constitutes the entire issued and outstanding stock of said company; and

WHEREAS, it is the intention and desire of second party to acquire all of the assets of said San Gabriel Petroleum Company, and dissolve and disincorporate said company and wind up its affairs; and

WHEREAS, included in the assets of said company, are the rights and privileges of said company secured to it by virtue of that certain agreement entered into on the 28th day of July, 1917, by the first parties hereto, as first parties, and by the said San Gabriel Petroleum Company, as second party, a copy of which contract is hereto attached, marked "Exhibit A" referred to and made a part hereof;

NOW THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows: [80]

I.

(a) The said M. L. McCray agrees to, and does by these presents sell, assign, transfer and convey to second party his entire stock holdings in, and amounting to one-third of, the issued and outstanding stock of said company, for the sum of Seventy-five Thousand (\$75,000.00) Dollars, payable as follows: Twenty-five Thousand (\$25,000.00) Dollars on the execution hereof, Twenty-five Thousand (\$25,000.00) Dollars in one year from the date hereof, and Twenty-five Thousand (\$25,000.00) Dollars in two years from the date hereof, with interest on said deferred payments at the rate of five (5%) per cent, per annum, payable semi-annually.

(b) The said L. A. McCray agrees to, and does by these presents sell, assign, transfer and convey to second party, his entire stock holdings in, and amounting to one-third of, the issued and outstanding stock of said company, for the sum of Seventy-five Thousand (\$75,000.00) Dollars, payable as follows: Twenty-five Thousand (\$25,000.00) Dollars on the execution hereof; Ten Thousand (\$10,000.00) Dollars in one year from the date hereof, Ten Thousand (\$10,000.00) Dollars in two years from the date hereof; Ten Thousand (\$10,000.00) Dollars in three years from the date hereof; Ten Thousand (\$10,000.00) Dollars in four years from the date hereof, and Ten Thousand (\$10,000.00) Dollars in five years from the date hereof, with interest on said deferred payments at the rate of five (5%) per cent, per annum, payable semi-annually.

(c) Said first parties and each of them hereby agree that said San Gabriel Petroleum Company may assign said agreement (Exhibit A) to second party, or to its successors and assign, and hereby agrees, [81] in the event that said agreement is assigned to and acquired by second party, or is assigned to or acquired by its successors or assignees, to accept said second party, its successors or assigns, as the beneficial owner of all rights and privileges secured by said agreement to said San Gabriel Petroleum Company, and hereby further agrees to accept and recognize said second party, its successors or assigns, as the second party to said agreement, as fully and completely as though said agree-

ment had been originally executed by and between themselves as first parties, and said Petroleum Midway Company, Ltd., as second party.

(d) Said first parties hereby authorize, empower and direct said second party, its successors or assigns, to account for and pay to the respective lessors named in the leases described and referred to in said agreement (Exhibit A), as rent or royalty, the amount of crude oil, petroleum, gas, brea, asphaltum and other kindred substances, or the sums of moneys in said agreement (Exhibit A) agreed to be paid to first parties by the San Gabriel Petroleum Company.

(e) Said first parties further agree, upon the request of second party, its successors or assigns, to execute any and all papers or instruments in writing proper or necessary to carry into effect the terms and objects of this agreement, and the acquisition and enjoyment by second party of all property and rights described herein, or in said agreement (Exhibit A); and said first parties further agree to use their best endeavors to obtain the consent of the lessors, named in said leases enumerated in said agreement (Exhibit A), to the assignment thereof by first parties, and in the event said consent is obtained, [82] to assign said leases to second party or to its successors or assigns.

II.

(a) Said second party agrees to purchase all of first parties' stock in said San Gabriel Petroleum

Company, upon the terms and conditions hereinbefore set forth.

(b) Said second party agrees to, and does hereby assume all the obligations of first parties hereto, in the leases enumerated in said agreement (Exhibit A), assumes and agrees to pay all debts of said San Gabriel Petroleum Company, and agrees to save each of said first parties free and harmless from any and all liability, either in law or in equity, growing out of their ownership of said stock in said San Gabriel Petroleum Company.

(c) Said second party agrees to and does hereby assume all obligations, of whatsoever kind or nature, which are now or may hereafter be imposed upon, or for which the said San Gabriel Petroleum Company is now, or may hereafter be or become liable or responsible.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate the day and year first above written.

M. L. McCRAY,
L. A. McCRAY,

[Stamps]

PETROLEUM MIDWAY
COMPANY, LTD.

By I. W. FUQUA

President.

By G. V. MARTIN,

Asst. Secretary. [83]

EXHIBIT G.

TRUST 5106.

DECLARATION OF TRUST.

KNOW ALL MEN BY THESE PRESENTS:

That SECURITY TRUST & SAVINGS BANK, a Corporation, hereinafter called "Trustee," duly organized and existing under the laws of the State of California, with its principal place of business in the City of Los Angeles, in said State, does hereby certify, admit, and declare that by instruments of assignment, absolute in form, there has been duly conveyed, transferred, assigned and delivered to it by THOMAS A. O'DONNELL, hereinafter sometimes called "Trustor," of the City of Los Angeles, California, the following described property hereinafter called "Trust Estate," to wit:

(a) The sum of Five Thousand (\$5000.00) Dollars in cash.

(b) All of the Trustor's rights, titles, interest, claims, estates, rentals, royalties, compensations and property vested in, payable to, or which he is now, or may hereafter become, entitled to claim, take, and receive under and according to the terms and provisions of a certain agreement, made and entered into by said Trustor, as party of the first part, and Petroleum Midway Company, Ltd., a Corporation, party of the second part, dated January 9, 1918, wherein said trustor was, and is, to receive a full one third ($1/3$) of the net profits from the operation of certain properties in said agreement

mentioned. (Reference to said agreement is hereby made for further particulars.)

That no consideration was paid by said Trustee to said Trustor for the delivery, transfer, conveyance, and assignment to it of all the above described trust estate, but that the same has been duly transferred, assigned and delivered by said Trustor, and has been accepted, and shall hereafter be held by it in trust for, and upon the following terms and conditions:

I.

(a) Said Trustee shall retain and reserve uninvested said sum of Five Thousand (\$5000.00) Dollars in cash to be used as and when required by the Trustee for the disbursement and payment of allowances as hereinafter provided under the terms of this trust, and for such purposes said Trustee is authorized to use, apply and disburse said sum of Five Thousand (\$5000.00) Dollars, together with any additions thereto which may hereafter be made for the purpose of paying the specified allowances, as is hereinafter set forth in this trust.

(b) Said Trustee shall not sell, transfer, assign, mortgage, hypothecate, exchange or in any respect dispose of the whole or any part of the remainder of the trust estate, but it shall [84] hold the same in trust hereunder, unless and until withdrawn from this trust, or exchanged for other property of the Trustor as hereinafter provided, and shall collect and receive all of the royalties, rents, issues, profits, benefits, income, considerations and properties, col-

lected, received or paid therefrom, and shall enforce all rights and estates taken by or vested in it under the above mentioned assignment of said contract.

(c) It is an express term and condition of this trust that said Trustor has reserved, and said Trustee does hereby assent to, the express right, power, option and privilege in said Trustor, by notice in writing addressed and delivered to said trustee at any time or times during the term of this trust, without any payment or other consideration therefor, to withdraw, and have duly paid, transferred, assigned, conveyed and delivered to him the whole or any part of the trust estate, or to substitute for the whole or any part of the above described trust estate any other property, real and/or personal which said Trustor may tender for the purpose, and upon the receipt of such written directions or request from said Trustor, said trustee shall forthwith and without consideration or any investigation or appraisal of the value of the same, convey, transfer or deliver to the Trustor any portion or the whole of the trust estate which may be designated in such written request, or shall accept in exchange and substitution for the whole or any portion of the trust estate, such property, real and/or personal, as the trustor shall tender to the Trustee for such exchange or substitution.

In acting in conformity and compliance with said Trustor's written request, said Trustee shall be and hereby is fully and absolutely released and discharged from all liability to any person whom-

soever on account of the property affected by such written request, or by reason of anything it may do in accordance therewith; anything to the contrary herein contained notwithstanding.

(d) In respect to any property which may at any time or times hereafter be conveyed, transferred or delivered by said Trustor to said Trustee, as herein permitted, said trustee shall be, as is hereby vested with and given full, absolute and uncontrolled power to sell, lease for terms both within and extending beyond the duration of this trust, mortgage, pledge, assign, invest, reinvest, and generally handle, manage, and sell the whole or any portion thereof, in such manner and upon such terms and conditions as to it may be best, but for the purposes of this trust as herein provided.

II.

During the term of this trust said Trustee shall collect all income, rents, issues, profits, and other property, and any other property constituting the trust estate, and shall use reasonable diligence and efforts [85] to collect, take sell and receive all of the rentals, royalties, income, issues, profits, benefits or other property which it may or shall be entitled to claim, sell, take or receive under said above described contract, and from the gross income received or derived therefrom, and/or from the principle of the trust estate, if that be necessary, said trustee shall monthly apply and dispose of the same as follows: to wit:

(a) Said trustee shall retain and pay to itself therefrom a sum equal to one per cent on the gross amount of such rentals, royalties, or properties as above mentioned, as compensation for its usual or ordinary services as trustee hereunder. If, and in the event, however, that the said sum of one per cent on the gross amount of such rentals, royalties or properties shall not amount in each year to at least Fifty Dollars (\$50.00) then said trustee shall be entitled to receive, shall be paid and said trustor does hereby agree to pay to it the difference between the sum so retained by the trustee and the sum of Fifty Dollars (\$50.00) it being the express intention and purpose that said Trustee shall receive and be paid in all events at least an annual compensation of Fifty Dollars (\$50.00) for each year of the duration of this trust.

(b) Said Trustee shall, in addition thereto, also be entitled to deduct, take and retain therefrom a reasonable compensation for any unusual or extraordinary services rendered by it as trustee hereunder or in connection with any of the trust estate or the properties therein mentioned or in any of its duties, rights or interests as trustee hereunder.

(c) Said trustee shall also be entitled to a reasonable compensation for its services covering the final termination, closing and distribution of the trust estate, in whole or in part.

(d) Said trustee shall also retain, withhold and deduct therefrom any and all other costs, charges, expenses, disbursements, advancements, income, in-

heritance, estate, and/or other taxes and assessments of every kind and nature chargeable to or by it incurred, expended or advanced in the care and management of the trust estate, and by reason of its acceptance and execution of this trust, either or both on its own initiative or at the request or direction of the trustor or any other person, who is entitled to request, direct or instruct said trustee to act in relation to this trust or the trust estate.

(e) All of the remaining net income, royalties, sums or other property collected and received by said trustee as aforesaid, shall be by said trustee paid and distributed on the first day of each and every month during the terms hereof, as follows, to-wit: [86]

(1) To Lillie O'Donnell, the wife of said trustor, a sum sufficient to fully discharge the obligations of said trustor to make monthly money payments to his said wife under the terms of a written agreement between them dated Sept. 5, 1916 (reference to which is hereby made for further particulars), together with such additional sum of money as shall at all times aggregate and make the monthly sum or amount of One Thousand Dollars (\$1000.00) during the term of this trust, or should said Lillie O'Donnell die prior to the termination hereof, then thereafter said sum of \$1000.00 each month shall be made to the O'Donnell Oil and Securities Co., a corporation organized and existing under the laws of the State of Delaware with its principal place of business at the City of Wilmington. In

making payments provided for in said agreement of Sept. 5, 1916, said trustee shall make the maximum payments therein called for unless and until said trustor shall in writing direct that the lesser payments therein mentioned shall thereafter be made.

(2) To Ruth O'Donnell, a daughter of said Trustor, the sum of Two Hundred Fifty (\$250.00) Dollars, during the term of this trust, or should she die prior to the termination thereof, then thereafter to said O'Donnell Oil & Securities Company.

(3) To Doris O'Donnell, a daughter of said trustor, the sum of Two Hundred Fifty (\$250.00) Dollars, during the term of this trust, or should she die prior to the termination thereof, then thereafter to said O'Donnell Oil & Securities Company.

(4) To Mamie Litster, a sister of said Trustor, the sum of Three Hundred (\$300.00) Dollars, during the term of this trust, or should she die prior to the termination thereof, then thereafter to said O'Donnell Oil & Securities Company.

(5) To said O'Donnell Oil & Securities Company all of the remaining undistributed net income, royalties, sums, or other properties from the trust estate during the term of this trust.

In the event that said trustee shall not during any month or months collect and receive from the trust estate sufficient to pay in full the allowances specifically above named in subdivisions one to four, both inclusive, of section E of paragraph II of this trust,

then said Trustee shall use and expend a sufficient sum or amount from said above named sum of Five Thousand (\$5000.00) Dollars, which constituted a part of the original trust estate, which when added to the funds available for distribution during the term of this trust shall make up the allowances above specified, [87] payable to said beneficiaries.

In the event that said Trustee shall resort to said sum of Five Thousand (\$5000.00) Dollars to pay the above mentioned monthly allowances, the amounts of withdrawal therefrom shall be by said Trustee replaced out of any surplus future earnings, incomes, profits or sums received by it under this trust, so that said sum of Five Thousand (\$5000.00) Dollars shall at all times, and as far consistent, with the due execution of this trust, be maintained and kept available to make up deficient allowance requirements to said above named beneficiaries.

In the event that said sum of Five Thousand (\$5000.00) Dollars shall be fully exhausted, and the net income or property distributable from this trust shall not be sufficient to pay monthly the above named beneficiaries the specific amounts herein designated, then said Trustee shall pro rate the net distributable income or property received from this trust amongst the beneficiaries above named in subdivision one to four hereof, both inclusive, in proportion to the respective amounts payable to them under this trust.

III.

Said Trustee, unless directed otherwise, and indemnified as hereinafter provided, shall, and may, be entitled to accept and rely, without any independent investigation or further inquiry upon the statements, reports or accountings made to it from time to time by said Petroleum Midway Company, Ltd., the second party in said above described contract, of the rentals, royalties, issues, profits, considerations and other properties which it is entitled to claim, take, accept, or receive under said contract; and such statements, reports and accountings from said Petroleum Midway Company, Ltd., shall be, except as herein otherwise provided, full, adequate and sufficient accountings thereunder to said Trustee, without further investigation or inquiry by it, provided, however, that the above limitations on the liability and duties of said trustee shall in no respect limit or restrict the right, power and authority of said Trustee, if it shall so elect to demand and compel any further statements, reports and accountings from said Petroleum Midway Company, Ltd., or itself to make any independent investigations and inquiry of the amounts or sums due and payable to it as assignee of said Trustor under said contract.

Said Trustor may by written demand or request delivered to said trustee, direct and require said trustee to make or institute any individual or supplemental investigation of inquiry, or to institute or defend any suit in relation to said contract, or

to the whole or any part of the trust estate which may be at the time subject to this trust, upon depositing with said trustee an amount of money sufficient to pay or indemnify said [88] trustee in the amounts sufficient and of such character as it shall require to protect it against all of the costs, charges, judgments, attorneys fees, expenses, liabilities, and obligations of any kind and amount which it may suffer, expend or incur in following or complying with such written instructions or requests.

IV.

Said trustee shall not be liable or answerable in any event, amount or degree for the validity of said contract, nor for its title, interest or claims thereunder, nor for the sufficiency or validity of the assignment to it of the said rentals, royalties, sums or other properties thereunder, and subject to this trust, but said trustee's sole and only responsibility and liability shall be for such sums of money, rights and other properties as have been actually transferred and delivered to, and by it received in trust hereunder. Said Trustee shall not be required to institute or defend any action in relation to any of the trust estate, nor for any of its duties as trustee hereunder, nor for the validity of this trust, or its duties as trustee hereunder, unless and until there shall be deposited with it an amount of money sufficient to pay, or it shall be furnished with an indemnity of such kind, character and amount as in its sole and abso-

lute discretion shall fully protect and indemnify it against all costs, charges, expenses, judgments, attorneys fees, liabilities and obligations of every kind or character to be by it suffered, expended or incurred in any such action.

V.

It is an express provision of this trust that said Trustor has reserved and he is hereby given the specific right, at any time, or from time to time hereafter, to convey, transfer, assign, and deliver to said trustee other or additional leases, contracts, sums of money, and/or other real and/or personal property of any kind to become subject to the provisions of this trust, providing however, that the same shall be of a kind or in a condition acceptable to said trustee.

Upon the acceptance thereof by said Trustee, such additional property shall ipso facto become subject to and held in trust under the terms hereof, and shall be managed, controlled, handled and disposed of by said trustee both as to the principal and distributable income subject to all the terms, conditions and trusts herein mentioned, and upon any termination hereof shall go in the same manner to the same corporation, and in the same events as herein provided, as though it had constituted a part of the original trust estate.

VI.

It is a further provision of this trust that said Trustor has reserved, and he is hereby given, the

express rights and power to revoke in whole or in part this trust at any time after two years from the date [89] hereof by a notice of revocation in writing addressed and delivered to said trustee at least five (5) days prior to the taking effect of such revocation. Between the time of receipt of such notice of revocation and its taking effect, said trustee shall have every power, right and privilege herein given to it in reference to the trust estate, except that no sales, incumbrance or other disposition of the principal or income of any trust estate shall be made by said Trustee during such period; provided, however, that on such revocation taking effect said Trustee shall convey, transfer, assign and deliver to said Trustor, or his nominees, such rights, titles, interests and estates as said Trustee shall then have or possess in and to all of the property then subject to this trust, and said Trustor or his nominees shall take and accept the trust estate affected thereby subject to, and shall assume all of the existing contracts, agreements and incumbrances or other obligations incurred in reference thereto by said trustee under the terms of this trust; and provided further that in no event shall any such notice of or attempted revocation be of any effect or validity unless and until all sums then be due the trustee under the terms hereof, or which it may be obligated to then or thereafter pay, shall first be fully paid, and said trustee shall be fully released and discharged from all liabilities and obligations of every kind and

nature affecting such property or the trustee in relation thereto, or the claims of any other beneficiaries under this trust, anything to the contrary herein contained notwithstanding.

VII.

Said trustee may at any time absolutely resign and discharge itself as trustee hereunder, by a written notice of such resignation given or mailed thirty (30) days in advance when such resignation shall take effect, to the trustor at the General Delivery Post Office in the City of Los Angeles, State of Calif. Said Trustee may likewise be removed as trustee hereunder by a written notice served upon said trustee by said trustor, and personally delivered to the trustee thirty (30) days in advance from the time when such removal shall take effect, provided, however, that said trustee shall in no event be removed, as trustee hereunder, unless and until all sums then due to it, or which it may be obligated to then or thereafter pay under the terms of this trust, shall be fully paid.

In the event of either the resignation or removal of said trustee hereunder, said trustor shall appoint any corporation in the city of Los Angeles then entitled to take, accept, and administer this trust or an individual as the successor trustee hereunder, and upon such appointment said trustee shall transfer and deliver to such successor trustee all property then subject to this trust.

VIII.

This trust shall continue in full force and effect for a period of ten (10) years from and after the date hereof, unless the whole [90] trust be sooner revoked, or unless the subject matter or corpus of the trust be sooner extinguished, lost, or exhausted, and the whole of the trust estate at the termination hereof shall be transferred absolutely *be* said O'Donnell Oil & Securities Company. Upon the expiration of said ten (10) years from the date hereof and the payment in full to the Trustee of all sums then due it under the terms hereof, said trustee shall interest, assign and deliver the whole of the property then subject to this trust to said O'Donnell Oil & Securities Co.

IX.

Any and all assignments of any interests in this trust shall be null, void and wholly ineffectual as to this trust, and as to the trustee hereunder, unless and until such assignments are filed in writing with the Trust Department of said Trustee, and the Trustee shall be paid, to-wit: \$2.50 for each assignment. In no event, however, shall the trustee be liable or answerable for the validity or sufficiency of any purported assignment. Each executed duplicate or copy of this declaration of trust must be surrendered for final cancellation to the trustee when this trust is closed.

X.

Said Trustee may, and it is hereby specifically authorized and empowered, but it shall in no event be required so to do, during the entire term of this trust, advance and loan for the uses, purposes and benefits of the trust estate its own private funds, and such loans or advancements shall bear current rates of interest, and shall be and constitute a first and prior lien on all of the trust estate and all incomes in the hands of the trustee, until such loans and advancements, with interest, are fully paid.

XI.

Each and every beneficiary under this trust, specifically excepting, however, said above named trustor, is hereby restrained from, and are and shall be without right, power and authority to sell, transfer pledge, mortgage, hypothecate, alienate, anticipate, or in any other manner affect, impair, his, her or their beneficiaries legal rights, titles, interests, claims and estates in and to the income and/or principal of this trust during the entire term hereof, nor shall the rights, titles, interests, estates of any beneficiary hereunder, excepting said Trustor, be subject to the rights or claims of creditors of any beneficiary, nor subject nor liable to any process of law or court and all of the income and/or principal under this trust shall be transferrable, payable and deliverable only, solely, exclusively, and personally to the above designated beneficiaries hereunder [91] at the time entitled to take the same under the

terms of this trust, and the personal receipt of the designated beneficiary hereunder, excepting said Trustor, shall be a condition precedent to the payment or delivery of the same by said trustee to each such beneficiary, providing, however, nothing in this paragraph contained shall relate to, effect, or restrain the rights hereunder of said above named trustor.

XII.

The terms, covenants and conditions of this trust herein expressed, shall inure to the benefit and bind the heirs, executors, administrators, and successors in trust of all of the parties herein mentioned.

Executed in duplicate.

IN WITNESS WHEREOF, the SECURITY TRUST & SAVINGS BANK has caused its corporate name to be subscribed hereto, as Trustee, and its corporate seal to be affixed by its Vice-President and Assistant Secretary, thereunto first duly authorized, this 25th day of July, in the year of our Lord Nineteen Hundred and Nineteen.

SECURITY TRUST & SAVINGS BANK,
as Trustee.

CHAS. H. TOLL, Vice-President.
and Asst. Secretary.

I, Thomas A. O'Donnell, do hereby certify and declare that I am the person named in the above and foregoing declaration of Trust, and therein called Trustor, and that the above and foregoing

Declaration of Trust fully, correctly and accurately sets out and declares the trusts under and upon which all of the said properties therein mentioned are held by said Trustee, and I do hereby agree, consent to approve, ratify and confirm the same in all particulars.

Dated this 25th day of July, 1919.

THOS. A. O'DONNELL. [92]

EXHIBIT H.

ASSIGNMENT OF CONTRACT.

KNOW ALL MEN BY THESE PRESENTS:

That THOMAS A. O'DONNELL of the City of Los Angeles, State of California, party of the first part, in consideration of good, sufficient and adequate considerations by him received from the SECURITY TRUST & SAVINGS BANK, a corporation of Los Angeles, Calif., party of the second part, the receipt of which is hereby acknowledged, has and does by these presents grant, convey, transfer, set over and assign unto said second party and its assigns all his rights, titles, interests, claims, estates and property in and to a certain written agreement dated January 9, 1918, and executed between said party of the first part herein and Petroleum Midway Company, Ltd., wherein said first party was to receive as a consideration for the

sale and transfer of certain stock therein mentioned, a full one-third ($\frac{1}{3}$) of all the net profits received by said Petroleum Midway Company, Ltd., from the development and operation of certain properties acquired by said Petroleum Midway, Ltd., from the San Gabriel Petroleum Co., a corporation, a copy of which contract is hereto attached, marked Exhibit A—and made a part hereof by reference thereto with like effect as if set forth herein at length.

In aid of this assignment said party of the first part does hereby make and constitute said second party as his Attorney-in-Fact for him, and in his name place and stead, but for the sole use and benefit of said second party to ask, demand, take, accept and receipt for all moneys, considerations and other properties payable to him under said contract marked Exhibit A—and to enforce the same in all respects and with like effect as said first party might or could do had this assignment not been executed, hereby ratifying, confirming and approving all that said second party may do or cause to be done by virtue of these presents.

Executed in duplicate.

IN WITNESS WHEREOF, said first party has hereunto set his hand and seal, and said second party has caused its corporate name to be subscribed and its corporate seal to be affixed by its Vice President and Asst. Secretary thereunto first duly

authorized this 25th day of July, 1919, at the City of Los Angeles, State of California.

SECURITY TRUST & SAVINGS BANK,
By Vice President,
By Assistant Secretary.

Receipt of executed, duplicate copy of the foregoing assignment is hereby made, and the undersigned does consent [93] to accept and acknowledge said SECURITY TRUST AND SAVINGS BANK as the assignee under the contract herein described and marked Exhibit A.

Dated, July 25th, 1919.

PETROLEUM MIDWAY COMPANY, LTD.
By I. W. FUQUA,
President.

By G. V. MARTIN,
Asst. Secretary. [94]

EXHIBIT I.

Thos. A. O'Donnell,
1004 Security Bldg.,
Los Angeles, Calif.

April 9, 1923.

Security Trust & Savings Bank,
Los Angeles,
California. Attention Mr. Rosebury.
Gentlemen:

You are hereby notified that, pursuant to the provisions of paragraph VI, page 6, of that certain

Declaration of Trust dated the 25th day of July, 1919, executed by you as trustee, and by the undersigned as trustor, and in the exercise of the right and power of revocation therein reserved and granted, I hereby revoke said trust in all of its provisions.

The corpus of the trust estate you may hold pending the execution of a new Declaration of Trust by you.

Yours very truly,

THOS. A. O'DONNELL. [95]

DECLARATION OF TRUST.

SECURITY TRUST AND SAVINGS BANK
and

THOMAS A. O'DONNELL

SECURITY TRUST & SAVINGS BANK
SAVINGS COMMERCIAL TRUST
Los Angeles, California. [96]

EXHIBIT "J".

DECLARATION OF TRUST

Trust No. 5549

KNOW ALL MEN BY THESE PRESENTS:

That SECURITY TRUST & SAVINGS BANK, a corporation, hereinafter called "Trustee," duly organized and existing under the laws of the State

of California, with its principal place of business in the City of Los Angeles, in said State, does hereby admit, certify and declare that THOMAS A. O'DONNELL, hereinafter sometimes called "Trustor," of the City of Los Angeles, California, has heretofore conveyed, transferred, assigned and delivered to it, and that it now holds, subject to the trust hereinafter declared, the following described property hereinafter called "Trust Estate," to-wit:

(a) The sum of Five Thousand (\$5,000.00) Dollars in cash.

(b) All of the Trustor's right, titles, interest, claims, estates, rentals, royalties, compensations and property vested in, payable to, or which he is now, or may hereafter become, entitled to claim, take, and receive under and according to the terms and provisions of a certain agreement, made and entered into by said Trustor, as party of the first part, and Petroleum Midway Company, Ltd., a Corporation, party of the second part, dated January 9, 1918, wherein said Trustor was, and is, to receive a full one-third ($\frac{1}{3}$) of the net profits from the operation of certain properties in said agreement mentioned. (Reference to said agreement is hereby made for further particulars.)

That no consideration was paid by said Trustees to said Trustor for the delivery, transfer, conveyance, and assignment to it of all the above described trust estate, but that the same has been duly transferred, assigned and delivered by said Trustor, and

has been accepted, and shall hereafter be held by it in trust for, and upon the following terms and conditions:

I.

(a) Said Trustee shall retain and reserve uninvested said sum of Five Thousand (\$5,000.00) Dollars in cash to be used as and when required by the Trustee for the disbursement and payment of allowances as hereinafter provided under the terms of this trust, and for such purposes said Trustee is authorized to use, apply, and disburse said sum of Five Thousand (\$5,000.00) Dollars, together with any additions thereto which may hereafter be made for the purpose of paying the specified allowances, as is hereinafter set forth in this trust.

(b) Said Trustee shall not sell, transfer, assign, mortgage, hypothecate, exchange, or in any other respect dispose of the whole or any part of the remainder of the trust estate, but it shall hold the same in [97] trust hereunder, unless and until withdrawn from this trust, or exchanged for other property of the Trustor as hereinafter provided, and shall collect and receive all of the royalties, rents, issues, profits, benefits, income, considerations and properties, collected, received or paid therefrom, and shall enforce all rights and estates taken by or vested in it under the above mentioned assignment of said contract.

(c) It is an express term and condition of this trust that said Trustor has reserved, and said Trus-

tee does hereby assent to, the express right, power, option and privilege in said Trustor, by notice in writing addressed and delivered to said Trustee at any time or times during the term of this trust, without any payment or other consideration therefor, to withdraw, and have duly paid, transferred, assigned, conveyed and delivered to him the whole or any part of the trust estate, or to substitute for the whole or any part of the above described trust estate any other property, real and/or personal which said Trustor may tender for the purpose, and upon the receipt of such written directions or request from said Trustor, said Trustee shall forthwith and without consideration or any investigation or appraisal of the value of the same, convey, transfer or deliver to the Trustor any portion or the whole of the Trust Estate which may be designated in such written request, or shall accept in exchange and substitution for the whole or any portion of the trust estate, such property, real and/or personal, as the Trustor shall tender to the Trustee for such exchange or substitution.

In acting in conformity and compliance with said Trustor's written request, said Trustee shall be and hereby is fully and absolutely released and discharged from all liability to any person whomsoever on account of the property affected by such written request, or by reason of anything it may do in accordance therewith; anything to the contrary herein contained notwithstanding.

(d) In respect to any property which may at any time or times hereafter be conveyed, transferred or delivered by said Trustor to said Trustee, as herein permitted, said Trustee shall be, and is hereby vested with and given full, absolute and uncontrolled power to sell, lease for terms both within and extending beyond the duration of this trust, mortgage, pledge, assign, invest, reinvest, and generally handle, manage and sell the whole or any portion thereof, in such manner and upon such terms and conditions as to it may seem best, but for the purpose of this trust as herein provided.

II.

During the term of this trust said Trustee shall collect all income, rents, issues, profits, and other property, and any other property constituting the trust estate, and shall use reasonable diligence and efforts to collect, take, sell and receive all of the rentals, royalties, income, issues, profits, benefits or other property which it may or shall be entitled to claim, sell, take or receive under said above described contract, and from the gross income received or derived therefrom, and/or from the principal of the trust estate, if that be necessary, said trustee shall monthly apply and dispose of the same as follows, to-wit: [98]

(a) Said trustee shall retain and pay to itself therefrom a sum equal to one per cent on the gross amount of such rentals, royalties or properties as above mentioned, as compensation for its usual or

ordinary services as trustee hereunder. If, and in the event, however, that the said sum of one per cent on the gross amount of such rentals, royalties or properties shall not amount in each year to at least Fifty Dollars (\$50.00), then said trustee shall be entitled to receive, shall be paid, and said trustor does hereby agree to pay to it the difference between the sum so retained by the trustee and the sum of Fifty Dollars (\$50.00), it being the express intention and purpose that said trustee shall receive and be paid in all events at least an annual compensation of Fifty Dollars (\$50.00) for each year of the duration of this trust.

(b) Said trustee shall, in addition thereto, also be entitled to deduct, take and retain therefrom a reasonable compensation for any unusual or extraordinary services rendered by it as trustee hereunder or in connection with any of the trust estate or the properties therein mentioned or in any of its duties, rights or interests as trustee hereunder.

(c) Said trustee shall also be entitled to a reasonable compensation for its services covering the final termination, closing and distribution of the trust estate, in whole or in part.

(d) Said trustee shall also retain, withhold and deduct therefrom any and all other costs, charges, expenses, disbursements, advancements, income, inheritance, estate, and/or other taxes and assessments of every kind and nature chargeable to or by it incurred, expended or advanced in the care and

management of the trust estate, and by reason of its acceptance and execution of this trust, either or both on its own initiative or at the request or direction of the trustor or any other person, who is entitled to request, direct or instruct said trustee to act in relation to this trust or the trust estate.

(e) All of the remaining net income, royalties, sums or other property collected and received by said trustee as aforesaid, shall be by said trustee paid and distributed on the first day of each and every month during the terms hereof, as follows, to-wit:

(1) To Lillie O'Donnell, the wife of said trustor, a sum sufficient to fully discharge the obligations of said trustor to make monthly money payments to his said wife under the terms of a written agreement between them dated September 5, 1916 (reference to which is hereby made for further particulars), together with such additional sum of money as shall at all times aggregate and make the monthly sum or amount of One Thousand Dollars (\$1,000.00) during the term of this trust, or should said Lillie O'Donnell die prior to the termination hereof, then thereafter said sum of \$1,000.00 each month shall be made to the Tomkins Investment Company, a corporation organized and existing under the laws of the State of California with its principal place of business at the City of Los Angeles. In making payments provided for in said agreement of September 5, 1916, said trustee shall make the maxi-

mum payments therein called for unless and until said trustor shall in writing direct that the lesser payments therein mentioned shall thereafter be made. [99]

(2) To Ruth O'Donnell Tompkins, a daughter of said Trustor, the sum of Two Hundred Fifty (\$250.00) Dollars per month, during the term of this trust, or should she die prior to the termination thereof, then thereafter to said Tompkins Investment Company.

(3) To Doris O'Donnell, a daughter of said Trustor, the sum of Two Hundred Fifty (\$250.00) Dollars per month during the term of this trust, or should she die prior to the termination thereof, then thereafter to said Tompkins Investment Company.

(4) To Mrs. Myra O'Donnell, now residing at No. 230 North Union Avenue, Los Angeles, California, and to Mrs. Winnie Tucker, now residing at No. 942 Victoria Avenue, Los Angeles, California, the sum of One Hundred (\$100.00) Dollars per month each, during the term of this trust, or should either of them die prior thereto then thereafter said sum of One Hundred (\$100.00) Dollars payable to the one deceased shall go to said Tompkins Investment Company.

(5) To said Tompkins Investment Company all of the remaining undistributed net income, royalties, sums, or other properties from the trust estate during the term of this trust.

In the event that said Trustee shall not during any month or months collect and receive from the trust estate sufficient to pay in full the allowances specifically above named in subdivisions one to four, both inclusive, of Section "E" of paragraph II of this trust, then said Trustee shall use and expend a sufficient sum or amount from said above named sum of Five Thousand (\$5,000.00) Dollars, which constituted a part of the original trust estate, which when added to the funds available for distribution during the term of this trust shall make up the allowances above specified, payable to said beneficiaries.

In the event that said Trustee shall resort to said sum of Five Thousand (\$5,000.00) Dollars to pay the above mentioned monthly allowances, the amounts of withdrawal therefrom shall be by said Trustee replaced out of any surplus future earnings, incomes, profits or sums received by it under this trust, so that said sum of Five Thousand (\$5,000.00) Dollars shall at all times, and as far as consistent, with the due execution of this trust, be maintained and kept available to make up deficient allowance requirements to said above named beneficiaries.

In the event that said sum of Five Thousand (\$5,000.00) Dollars shall be fully exhausted, and the net income, or property distributable from this trust shall not be sufficient to pay monthly the above named beneficiaries the specific amounts herein designated, then said Trustee shall pro rata

the net distributable income or property received from this trust amongst the beneficiaries above named in subdivision one to four hereof, both inclusive, in proportion to the respective amounts payable to them under this trust.

III.

Said Trustee, unless directed otherwise, and indemnified as hereinafter provided, shall, and may, be entitled to accept and rely, [100] without any independent investigation or further inquiry, upon the statements, reports or accountings made to it from time to time by said Petroleum Midway Company, Ltd., the second party in said above described contract, of the rentals, royalties, issues, profits, considerations and other properties which it is entitled to claim, take, accept, or receive under said contract; and such statements, reports and accountings from said Petroleum Midway Company, Ltd., shall be, except as herein otherwise provided, full, adequate and sufficient accountings thereunder to said Trustee, without further investigation or inquiry by it, provided, however, that the above limitations on the liability and duties of said Trustee shall in no respect limit or restrict the right, power and authority of said Trustee, if it shall so elect to demand and compel any further statements, reports and accountings from said Petroleum Midway Company, Ltd., or itself to make any independent investigations and inquiry of the amounts or sums due

and payable to it as assignee of said Trustor under said contract.

Said Trustor may by written demand or request delivered to said Trustee, direct and require said Trustee to make or institute any individual or supplemental investigation or inquiry, or to institute or defend any suit in relation to said contract, or to the whole or any part of the trust estate which may be at the time subject to this trust, upon depositing with said Trustee an amount of money sufficient to pay or indemnify said Trustee in the amounts sufficient and of such character as it shall require to protect it against all of the costs, charges, judgments, attorneys' fees, expenses, liabilities, and obligations of any kind and amount which it may suffer, expend or incur in following or complying with such written instructions or requests.

IV.

Said Trustee shall not be liable or answerable in any event, amount or degree for the validity of said contract, nor for its title, interest or claims thereunder, nor for the sufficiency or validity of the assignment to it of the said rentals, royalties, sums or other properties thereunder, and subject to this trust, but said Trustee's sole and only responsibility and liability shall be for such sums of money, rights and other properties as have been actually transferred and delivered to, and by it received in trust hereunder. Said Trustee shall not be required to

institute or defend any action in relation to any of the trust estate, nor for any of its duties as Trustee hereunder, nor for the validity of this trust, or its duties as Trustee hereunder, unless and until there shall be deposited with it an amount of money sufficient to pay, or it shall be furnished with an indemnity of such kind, character and amount as in its sole and absolute discretion shall fully protect and indemnify it against all costs, charges, expenses, judgments, attorneys' fees, liabilities and obligations of every kind or character to be by it suffered, expended or incurred in any such action.

V.

It is an express provision of this trust that said Trustor has reserved and he is hereby given the specific right, at any time, or from time to time hereafter, to convey, transfer, assign and deliver to [101] said Trustee other or additional leases, contracts, sums of money, and/or other real and/or personal property of any kind to become subject to the provisions of this trust, providing, however, that the same shall be of a kind or in a condition acceptable to said Trustee.

Upon the acceptance thereof by said Trustee, such additional property shall ipso facto become subject to and held in trust under the terms hereof, and shall be managed, controlled, handled and disposed of by said Trustee both as to the principal and distributable income subject to all the terms, con-

ditions and trusts herein mentioned, and upon any termination hereof shall go in the same manner to the same corporation, and in the same events as herein provided, as though it had constituted a part of the original trust estate.

VI.

It is a further provision of this trust that said Trustor has reserved, and he is hereby given, the express right and power to revoke in whole or in part this trust at any time prior to its natural expiration by a notice of revocation in writing addressed and delivered to said Trustee at least five (5) days prior to the taking effect of such revocation. Between the time of receipt of such notice of revocation and its taking effect, said Trustee shall have every power, right and privilege herein given to it in reference to the trust estate, except that no sales, incumbrance or other disposition of the principal or income of any trust estate shall be made by said Trustee during such period; provided, however, that on such revocation taking effect said Trustee shall convey, transfer, assign and deliver to said Trustor, or his nominees, such rights, titles, interests and estates as said Trustee shall then have or possess in and to all of the property then subject to this trust, and said Trustor or his nominees shall take and accept the trust estate affected thereby subject to, and shall assume all of the existing contracts, agreements and incumbrances or other obligations incurred in reference thereto

by said Trustee under the terms of this trust; and provided further that in no event shall any such notice of or attempted revocation be of any effect or validity unless and until all sums then be due the Trustee under the terms hereof, or which it may be obligated to then or thereafter pay, shall first be fully paid, and said Trustee shall be fully released and discharged from all liabilities and obligations of every kind and nature affecting such property or the Trustee in relation thereto, or the claims of any other beneficiaries under this trust, anything to the contrary herein contained notwithstanding.

VII.

Said Trustee may at any time absolutely resign and discharge itself as Trustee hereunder, by a written notice of such resignation given or mailed thirty (30) days in advance when such resignation shall take effect, to the Trustor at the General Delivery Post Office in the City of Los Angeles, State of California. Said Trustee may likewise be removed as Trustee hereunder by a written notice served upon said Trustee by said Trustor, and personally delivered to the Trustee thirty (30) days in advance from the time when such removal shall take effect, provided, however, that said Trustee shall in no event be removed, as Trustee hereunder, unless [102] and until all sums then due to it, or which it may be obligated to then or thereafter pay under the terms of this trust, shall be fully paid.

In the event of either the resignation or removal of said Trustee hereunder, said Trustor shall appoint any corporation in the City of Los Angeles, then entitled to take, accept, and administer this trust, or an individual, as the successor Trustee hereunder, and upon such appointment said Trustee shall transfer and deliver to such successor Trustee all property then subject to this trust.

VIII.

This trust shall continue in full force and effect for a period of ten years from and after the date hereof unless the whole trust be sooner revoked, or unless the subject matter or corpus of the trust be sooner extinguished, lost or exhausted. Upon the expiration of said ten years from the date hereof, and the payment in full to the Trustee of all sums then due it under the terms hereof, said Trustee shall transfer, assign and deliver the whole of the property subject to this trust to said Tompkins Investment Company. Each executed duplicate or copy of this trust agreement must be filed for final cancellation with the Trustee when this trust is closed.

IX.

Each and every beneficiary under this trust, specifically excepting, however, said above named Trustor, who has reserved and is given the express right, power and authority at any time or times during the term hereof, to transfer and assign the whole or any part of his rights, titles, interests and

estates, both legal and beneficial, under this trust, is hereby restrained from and are and shall be without right, power and authority, unless and until written consent or approval thereof shall be given in each case by said above named Trustor, to sell, transfer, pledge, mortgage, hypothecate, alienate, anticipate or, in any other manner affect impair his, her or their beneficial and/or legal rights, titles, interests, claims and estates in and to the income and/or principal of this trust during the entire term hereof, but if said Trustor's written consent and approval thereof be given any of said beneficiaries may so sell, pledge or otherwise affect their interests and estates under this trust as above provided, and not otherwise, nor shall the rights, titles, interests and estates of any beneficiary hereunder, excepting said Trustor, be subject to the rights or claims of creditors of any such beneficiary nor subject nor liable to any process of court or law, and all of the income and/or principal under this trust shall, except as above provided, be transferable, payable, deliverable, only, solely, exclusively and personally to the above designated beneficiaries hereunder at the time entitled to take the same under the terms of this trust, and the personal receipt of the designated beneficiary hereunder, excepting said trustor, shall be a condition precedent to the payment or delivery of the same by said Trustee to each such beneficiary, provided, however, that nothing in this paragraph contained shall relate [103] to, affect or restrain the rights hereunder of said above named Trustor,

nor of any of said beneficiaries who have obtained said written consent or approval of said Trustor. Any and all of such assignments shall be null, void and wholly ineffectual as to this trust and as to the Trustee hereunder unless and until such assignments are filed in writing with the Trust Department of said Trustee, and the Trustee shall be paid Two and 50/100 (\$2.50) Dollars for each such assignment. In no event, however, shall the Trustee be liable or answerable for the validity or sufficiency of any purported assignment.

X.

Said Trustee may, and it is hereby specifically authorized and empowered, but it shall in no event be required so to do, during the entire term of this trust, advance and loan for the uses, purposes and benefits of the trust estate its own private funds, and such loans or advancements shall bear current rates of interest, and shall be and constitute a first and prior lien on all of the trust estate and all incomes in the hands of the Trustee, until such loans and advancements, with interest, are fully paid.

XI.

The terms, covenants and conditions of this trust herein expressed, shall inure to the benefit and bind the heirs, executors, administrators, and successors in trust of all of the parties herein mentioned.

Executed in duplicate.

IN WITNESS WHEREOF, THE SECURITY TRUST & SAVINGS BANK has caused its corporate name to be subscribed hereto, as Trustee, and its corporate seal to be affixed by its Vice President and Assistant Secretary, thereunto first duly authorized, this 16th day of April, 1923.

SECURITY TRUST & SAVINGS BANK,
as Trustee,
By..... Vice President,
And..... Asst. Secretary. [104]

I, Thomas A. O'Donnell, do hereby certify and declare that I am the person named in the above and foregoing Declaration of Trust, and therein called Trustor, and that the above and foregoing Declaration of Trust fully, correctly and accurately sets out and declares the trusts under and upon which all of the said properties therein mentioned are held by said Trustee, and I do hereby agree, consent to, approve, ratify and confirm the same in all particulars.

Dated this 16th day of April, 1923.

THOS. A. O'DONNELL.

LHR:AW [105]



Counsel also offered and there was received in evidence the income tax return of petitioner for the year 1923 showing that no part of the monies referred to in the affirmative issues raised by respondent's second amended answer was included in the return or reported by the taxpayer.

Petitioner, Thomas A. O'Donnell, tenders and presents the foregoing as a statement of evidence in this case and prays that the same be approved by the United States Board of Tax Appeals and made a part of the record in this case.

THOMAS R. DEMPSEY,
A. CALDER MACKAY,
Attorneys for Petitioner,
1104 Pacific Mutual Building,
Los Angeles, California.

The foregoing evidence is all of the evidence adduced at the hearing before the United States Board of Tax Appeals and the same is approved by C. M. Charest, General Counsel, Bureau of Internal Revenue, as attorney for the Commissioner of Internal Revenue.

Dated, Oct. 5, 1932.

C. M. CHAREST,
General Counsel, Bureau of
Internal Revenue.

This statement of evidence is duly approved and settled this 5th day of October, 1932.

ERNEST H. VAN FOSSAN,
Member, United States Board of
Tax Appeals.

[Endorsed]: Filed Oct. 5, 1932. [106]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare and certify to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit within the time provided by the rules of that court in this respect, as extended, a transcript of record for review herein consisting of the following documents:

1. The docket entries of the proceedings before the United States Board of Tax Appeals.

2. All pleadings before the United States Board of Tax Appeals in this cause.

Please have noted the entry of a general denial to the affirmative allegations set forth in respondent's second amended answer.

3. Findings of fact, opinion and decision of the Board.

4. Petition for review and notice of filing, with acknowledgment of service.

5. Statement of evidence, as settled and allowed.

[107]

6. Order enlarging time for the preparation of the evidence and for the transmission and delivery of the record. Not included in transcript.

7. This Praeipce.

THOMAS R. DEMPSEY,
A. CALDER MACKAY,
1104 Pacific Mutual Building,
Los Angeles, California.
Attorneys for Petitioner.

Los Angeles, California.

October 4, 1932.

Service of a copy of the within praecipce is hereby admitted this 5th day of Oct. 1932.

(Signed) C. M. CHAREST,
Attorney for Respondent.

[Endorsed]: Filed Oct. 5, 1932. [108]

[Title of Court and Cause.]

CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 108, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the praecipce in the appeal as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax

Appeals, at Washington, in the District of Columbia,
this 28th day of October, 1932.

[Seal]

B. D. GAMBLE,
Clerk,
United States Board of Tax Appeals.

[Endorsed]: No. 7002. United States Circuit
Court of Appeals for the Ninth Circuit. Thomas A.
O'Donnell, Petitioner, vs. Commissioner of Internal
Revenue, Respondent. Transcript of Record Upon
Petition to Review an Order of the United States
Board of Tax Appeals.

Filed November 7, 1932.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

